THE SINKING OF *RE POLEMIS*, p. 69: REPORT, p. 85

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CURRENT TOPICS

Practical Help to Africa

UP to now legal education for those who intend to practise law in the Commonwealth has been provided by the Bar and the universities. The result is that thousands of students, having passed the Bar Final and possibly taken a degree, have returned to their homes to take their places in a fused profession without having had any training in the work of a solicitor. In October, 1960, the Lord Chancellor appointed a committee under the chairmanship of LORD DENNING to consider what additional facilities ought to be made available to provide additional instruction and training for lawyers intending to practise in Africa, with special reference to the acquisition of practical experience and the giving of instruction in the functions of a solicitor to those trained as barristers who intend to practise in a fused profession. The committee, which contains several eminent solicitors both in practice and in the academic world, has now reported, and we summarise the report on p. 80. The important recommendations from our point of view are that the Council of Legal Education and The Law Society should be invited to introduce a substantial period of practical training and, more specifically, that both barristers and solicitors should be encouraged to take pupils from overseas for a period of six months. We believe that a very large number of solicitors will be delighted to help and we hope that the Council will accept the responsibility which the committee envisages. The future of independent Africa is in the balance: at last we are offered a practical way of service. An incidental result of the report may well be to bring the Council of Legal Education and The Law Society into closer touch and thereby give impetus towards a common system of education and training.

End of Polemis

To adapt the words of W. S. Gilbert, "glad is the student's heart who year by year sees one by one his cases disappear." The latest casualty is *Re Polemis and Furness Withy and Co., Ltd.* [1921] 3 K.B. 560, which was summarily despatched by the Judicial Committee of the Privy Council last week in *Overseas Tankship (U.K.), Ltd.* v. *Morts Dock & Engineering Co., Ltd.*, which we report this week at p. 85. It is true that *Polemis* has been in failing health for many years and that it has required courage of the highest order to rely on it unqualified and without reservations. It also is true that the Privy Council are not the House of Lords, but when we examine the composition of the Judicial Committee we may be excused for jumping to the conclusion that the House of Lords might

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well have reached the same conclusion. So after forty years we know that reasonable foreseeability is the test of liability for damage by negligence. Most people have known all along that this should be so. The whole episode (if we may so describe forty years' deviation) is a powerful argument for speedier law reform, which should not be left to the hazards of litigation or carried out at the expense of the litigants. An article on this subject appears at p. 69 of this issue.

Easier H.P. Terms

FROM last Friday the maximum period for the payment of the balance due under hire-purchase and credit-sale agreements became three years in the cases of all those goods for which a two-year period was previously specified. The rates of deposit are not changed. Goods affected include cars, light vans and motor-cycles, radio and television sets, refrigerators, washing machines and furniture. These changes were authorised by the Hire-Purchase and Credit Sale Agreements (Control) (Amendment) Order, 1961 (S.I. 1961 No. 53). Also in operation on 20th January was the Control of Hiring (Amendment) Order, 1961 (S.I. 1961 No. 54), which prohibits hiring agreements under which the lowest rental is less than 25 per cent. of the highest rental during the period of the agreement. The order also provides that a payment of an amount equivalent to the advance rentals is required to be made by a person if he is to be in possession of goods to which the order applies for fourteen days or more in anticipation of the making of a hiring agreement.

Husband and Wife in Tort

WE cannot understand how the present law relating to the liability to each other in tort of husband and wife has been allowed to survive for so long. It is wholly unsuited to the age of the motor car. The Law Reform Committee (9th Report, Cmnd. 1268, H.M.S.O., 9d.) has recommended that the old common-law rule that husbands and wives cannot sue each other for civil wrongs should be abolished: it has already been eaten into by s. 12 of the Married Women's Property Act, 1882. The committee also proposes that husbands should be able to sue wives for the protection of their own property and for ante-nuptial torts. The process of sweeping away anachronisms is long.

Need for Another Bill?

IN *Fisher* v. *Bell* [1960] 3 W.L.R. 919, the Divisional Court held that the display of "flick knives" in a shop window did not constitute the offence of offering them for sale within s. 1 (1) of the Restriction of Offensive Weapons Act, 1959, but the Restriction of Offensive Weapons Act, 1959 (Amendment) Bill, which was introduced by Mr. BARNETT JANNER, seeks to deal with this situation by inserting after "offers for sale or hire" the words "or exposes for the purpose of sale." It is to be hoped that this Bill will be found a place in the Statute Book. A similar point arose in *Mella* v. *Monahan* (1961), *The Times*, 21st January. The manager of a shop was alleged to have displayed obscene photographs in his shop window with a ticket attached stating 10s. a packet of five photographs. He was convicted of the offence of offering for sale obscene photographs contrary to s. 2 (1) of the Obscene Publications Act, 1959, but this case was decided before the decision of *Fisher* v. *Bell*. The Divisional Court found it impossible to distinguish *Fisher* v. *Bell* and, with reluctance, they allowed the manager's appeal. Can we now expect the introduction of an Obscene Publications Act, 1959 (Amendment) Bill?

Fair Comment?

WE are not familiar with the law of Austria, but an interesting point arose in a recent case in the courts of that land. A music critic wrote that the piano accompanist at a concert had "struggled hard with the notes and lagged unsteadily behind." The accompanist sued the critic for "damaging his reputation and causing him material harm" and recovered 1,000 schillings. If this case had arisen in England, would the critic have been able to shelter behind the defence of fair comment? Perhaps he would not, although a person "who goes upon the stage to exhibit himself to the public, or who gives any kind of performance to which the public is invited, may be freely criticised" (per Deemer, J., in *Cherry* v. "*Des Moines Leader*" (1901), 114 Iowa R. 298). In order to succeed the accompanist would have been required to show that the words used travelled "beyond the limit of fair criticism" (per Collins, M.R., in *McQuire* v. *Western Morning News Co., Ltd.* [1903] 2 K.B. 100). Singers, at least, have been able to recover damages from their critics. For example, in *Cooney* v. *Edeveain* (1897), 14 T.L.R. 34, Miss Lottie Collins recovered damages from the proprietor of *Society* in respect of an allegation that one of her songs had supplied "the only touch of vulgarity" in the sort of show to which a man could "with impunity take his maiden aunt." The words used in *Newbury* v. *Triad Magazine, Ltd., of Australia* (1920), 21 N.S.W.S.R. 189, were even more scathing. In the course of commenting upon the plaintiff's performance at a certain concert, the defendants said that "a determined and appalling sound suddenly broke upon the affrighted air," and they found that the "peculiar-trussed-turkey-quality of his squawk is somewhat difficult of analysis. At times his throat appears to possess the real 'rigor mortis' rigidity." The jury returned a verdict for the plaintiff for £500, but in all such cases the question is whether the words published are an "honest expression of the commentator's real view and not mere abuse or invective under the guise of criticism" (per Lord Porter in *Turner* v. *Metro-Goldwyn-Mayer Pictures, Ltd.* [1950] 1 All E.R. 449).

Too Small for the Job

INDUSTRIAL unrest is not unknown in this country, but some workers in the machine shop of a factory in Peterborough recently threatened to strike for an unusual reason. It seems that a sixteen-year-old boy passed his apprentice examination "with flying colours," but the factory doctor took the view that a boy 4 ft. 7 in. tall and weighing 6 st. 3 lb. was not suited to work of this kind. A young person taken into any employment in a factory must not remain in that employment for longer than the prescribed period unless he has been examined by the appointed factory doctor and certified by him to be fit for that employment: s. 99 (1) of the Factories Act, 1937. In this case the factory doctor refused to grant such a certificate because the boy was so "under-developed," but the threatened strike did not take place. The boy was offered a job on the staff to which the Factories Acts do not apply.

THE SINKING OF RE POLEMIS

THERE is a poignant moment in Plato's Symposium where the feast is over and each of the politicians, philosophers and sophists of the Golden Age of Athens, seated round the banqueting table, has contributed his view and each in turn, overcome by wine and drowsiness, has fallen into slumber. Finally Alcibiades, handsome, brilliant, wanton, is left with Socrates, the only two awake. Then Alcibiades, too, falls asleep: Socrates, gazing affectionately at his wayward pupil, murmurs, "And this was the best of them," and toddles off to the bath. So might those who have known a more golden age in the common law and practised or studied in the last four decades have said: "Common Employment is no more. Last Opportunity, we are told, never existed. One pillar, however, rock-like stands, the rule of liability in tort, the rule in *Polemis*" (*Re Polemis and Furness, Withy & Co., Ltd.* [1921] 3 K.B. 560). And now . . . even that pillar has been shaken by the modern Samsons: as was demonstrated on 18th January, 1961, when a full court of the Judicial Committee of the Privy Council gave its decision in the case of *Overseas Tankship (U.K.), Ltd.* v. *Morts Dock & Engineering Co., Ltd.*, *p.* 85, *post*.

The facts

The facts in that case cannot easily be compressed into a very small compass. The respondents owned a wharf in Sydney harbour which had been severely damaged by fire. A quantity of oil escaped from the appellants' ship on to the waters of the bay and later caught fire. There was floating in the oil underneath the respondents' wharf smouldering cotton waste which had been set afire by molten metal falling from the wharf. The cotton waste set the oil afire and the consequent fire did severe damage to the wharf. In the court below the appellants were found liable. The trial judge had found they were negligent but "that they did not know and could not reasonably be expected to know that the furnace oil was capable of being set alight when spread on water."

Grounds of decision

Viscount Simonds, giving the advice of the Board (whose other members were Lord Reith, Lord Radcliffe, Lord Tucker and Lord Morris of Borth-y-Gest), indicated the grounds on which their lordships considered *Polemis* should no longer be regarded as good law and which had moved them to allow the appeal in the manner announced by him at the close of his judgment.

In the first place it was considered that the conclusion reached by the Court of Appeal in *Polemis* was arrived at on consideration of comparatively few authorities and that too much reliance had been placed on a dictum of Lord Sumners in *Weld-Blundell* v. *Stephens* [1920] A.C. 956, at p. 983, including the famous passage in which the learned Lord of Appeal in Ordinary had said that foreseeability "went to culpability, not compensation." The Board rejected Lord Sumner's speech as not in all respects easy to follow. The passages in that speech relied on by the Court of Appeal in *Polemis* were not essential to the decision in *Weld-Blundell* v. *Stephens*; they were therefore mere dicta and were in any event erroneous.

Secondly, the courts had in the past been at times in grave danger of being led astray by scholastic theories of causation and their ugly and barely intelligible jargon.

Thirdly, up to the time of *Polemis* it had been universally accepted that the rules in regard to damage for breach of contract and for tort were generally speaking the same. Yet *Hadley* v. *Baxendale* (1854), 9 Exch. 341, was not cited in argument nor referred to in the judgment in *Polemis*.

Again, *Polemis* had never been subject to the express scrutiny of the House of Lords or the Privy Council: in Scotland it had been rejected. Its authority had been severely shaken and it should no longer be regarded as good law.

Foreseeability test in the ascendant

The decision in *Overseas Tankship (U.K.), Ltd.* v. *Morts Dock & Engineering Co., Ltd.*, will undoubtedly provoke discussion among lawyers. It indicates that certainly the present Judicial Committee of the Privy Council and not improbably the present Appellate Committee of the House of Lords is of the common-sense rather than the philosophical school of thought in matters of causation. They have in effect approved the words of du Parcq, L.J., in *Smith* v. *Harris* [1939] 3 All E.R. 960, at p. 967: "If an argument has to be put in terms which only a school-man could understand then I am very doubtful whether it can possibly be expressing the common law."

The substitution of the foreseeability test for the directness test undoubtedly has the merit of simplicity. It is undeniably easier to determine what is foreseeable by a reasonable man than what is a "direct" consequence. The law hereon as it has stood in the past has bristled with contrary dicta and the use of the same word to express different and sometimes contradictory meanings. It is a criticism of the law as it has stood and not of those who have sought to recapitulate it that the learned editor of Halsbury's Laws of England (3rd ed., Vol. XI (title Damages), at p. 277) states: "In cases of tort loss or damage which is neither the natural and probable result of the act or omission complained of nor its direct result is too remote. The rule of remoteness does not bar recovery in respect of loss or damage which is a direct result even though it was not antecedently probable or foreseeable," and then adds in a footnote: "It is unsettled how far liability for direct but unforeseeable results extends in tort."

Unanswered questions

On the other hand there may still be questions to be asked, some perhaps not without reason. *Polemis* was cited in argument in *Woods* v. *Duncan* [1946] A.C. 401, but the House of Lords neither approved nor overruled it (Lord Porter stated, at p. 437: "No question of measure of damage arises here as arose in *Re Polemis*"). To-day, nearly forty years after *Polemis* and nearly fifteen years after *Woods* v. *Duncan*, the Privy Council have stated that *Polemis* should no longer be considered good law. But in the nature of things only one judgment is available since in the Privy Council only one judgment is delivered. It may be that the matter will receive early consideration in the House of Lords, especially as the question of nuisance was specifically remitted to the Full Court of the Supreme Court of New South Wales and it may well be that only negligence is covered by the new decision.

In the meantime a number of questions appear to remain unanswered. Will this decision govern both damage and damages—culpability and compensation? If so, what will happen to the "thin skull" cases? If a bicyclist in error knocks down a deceptively healthy-looking pop singer, earning

a thousand pounds a week, and he dies in consequence—although an averagely healthy young man would have lost nothing more than his temper and the crease in his trousers—what is the measure of damages? Is it a fifty pound note, as it would be if the pop singer had not possessed an "eggshell" skull? Or can the multiplication table be employed? Ordinary practitioners may feel that if *Polemis* is to be despatched, its body should be slain and its spirit exorcised by the only court whose judgments are incontrovertibly binding on the High Court and the Court of Appeal. Otherwise, clanking and gibbering, its ghost will continue to haunt us from the grave.

B. G. C. W.

CAPITAL AND INCOME: APPORTIONMENTS AS TO TIME—II

In 1834 Parliament sought to put a gloss on the common-law rule by passing the Apportionment Act. This Act is still on the statute book but it was rendered obsolete by the much wider provisions of the Apportionment Act, 1870. Section 2 of the 1870 Act provides: "All rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly." Thus the common-law exception has become the statutory rule. The Act only applies to payments which are accruing at the date of death and thus it does affect the position of rent payable in advance or of other payments which have actually accrued due prior to the date of death.

Rents include rent service, rent-charge and rent seck, and also tithes and all periodical payments or renderings in lieu of or in the nature of rent or tithe; annuities include salaries and pensions; dividends include all payments made by the name of dividend, bonus or otherwise out of the revenue of trading or other public companies (including any company incorporated under the Companies Acts: *Re White* [1913] 1 Ch. 231), divisible between all or any of the members of such respective companies, whether such payments are usually made or declared at any fixed times or otherwise; and all such divisible revenue is for the purposes of the Act deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment is declared or expressed to be made. The word "dividend" does not include payments in the nature of a return or reimbursement of capital.

Where the Act applies

If the 1870 Act applies to a payment it is possible to say with a considerable degree of certainty to whom it should be paid. There are three possibilities.

First, the payment may relate to a period wholly before the death of the testator. If it does it is capital and should be added to the corpus of the trust fund. Of course, as we saw last week, this would be the result anyway if the moneys were paid or should have been paid before the death of the testator. It is also the rule where, as in the case of a dividend declared after the date of the death, the testator had no right to receive payment before he died (*Re Muirhead* [1916] 2 Ch. 181, and *Re Oppenheimer* [1907] 1 Ch. 399). In *Re Muirhead* a testator who died in 1913 bequeathed his residuary personalty to trustees upon trust to pay the dividends and income thereof to his wife for life and after her death in trust for nephews and nieces. The widow died on 24th July, 1915. Part of the residue consisted of stocks in three railway companies. In September, 1915, each of these companies declared a dividend payable about a month afterwards for the half-year ending on the preceding 30th June, that is for a period wholly within the lifetime of the widow. It was held that the Act applied and the widow's estate was entitled to the whole of the dividends. Thus the Act was applied to a case where no division or apportionment was in fact required. Eve, J., said (at the foot of p. 185): "In my opinion, whenever there are periodical payments accruing when the event calling for apportionment occurs, the Act is at once brought into operation and must be applied, and when, subsequently, the accruing payments become due and payable they must be distributed in accordance with the Act as applied on the occurrence of the event which brought it into operation. The Act does not cease to apply because the accruing payments ultimately become due and payable by instalments some of which go entirely to one destination."

Secondly, if the payment relates to a period partly before and partly after the death of the testator, there is an apportionment.

Thirdly, if the moneys relate to a period wholly after the death of the testator they are income and should be paid to the tenant for life. This result is achieved without the aid of the Act, because at the date of his death the payment is not accruing due. In *Re Wakley* [1920] 2 Ch. 205, a testator specifically bequeathed cumulative preference shares in a company to his son *R* and settled his residuary estate on trust for his children. At his death in 1905 the dividends on the shares were in arrear and it was not until 1907 that there were any profits available for dividend. In that year an interim dividend was declared sufficient in amount to satisfy all the arrears upon the preference shares. The Court of Appeal held that the dividend declared in 1907 must be treated as being declared in respect of that year only, and that the whole payment was income belonging to the specific legatee. For further cases on cumulative preference shares see *Re Marjoribanks* [1923] 2 Ch. 307, and *Re Sandbach* [1933] 1 Ch. 505, both following *Re Wakley*, and *Re Sale* [1913] 2 Ch. 697, which was the converse case.

When does the Act not apply?

The Apportionment Act does not apply to annual sums made payable in policies of assurance of any description (s. 6), nor if apportionment is expressly excluded (s. 7). The Act does not apply to the profits of a partnership because such profits are not "periodical payments in the nature of income." This was decided in *Jones* v. *Ogle* (1872), L.R. 8 Ch. 192. Lord Selbourne, L.C. (at p. 198), said that to come within the Act ". . . they must be payments which are made periodically, recurring at fixed times, not at variable periods, nor in the exercise of the discretion of one or more individuals, but from some antecedent obligation; and, further, they must be in the nature of income; that is, coming in from some kind of investment, as in the other cases with which the Act deals."

Finally, the Act does not apply to payments which are made in respect of some indefinite period. If this was not

the rule it would be difficult to see how the payments could be considered as accruing from day to day (see *Re Jowitt* [1922] 2 Ch. 442, at p. 446, per Lawrence, J.).

The rules where the Act does not apply

If for one of these reasons the payment is one to which the Act does not apply, to whom should it be handed over? If the Act has been expressly excluded the chances are that the testator will have substituted his own rules; but for the moment it is assumed that he has not done so. There are special rules which have been established by the judges in relation to profits from partnerships and dividends.

Taking partnership profits first, the fundamental principle is that profits accrue at the end of the partnership accounting period for which they are declared and should be paid to the person entitled at that date. Thus if the payments relate to an accounting period which is wholly before the death of the testator the payments are capital even if they are ascertained and paid after the death (*Re Robbins* [1941] Ch. 434). If, however, the testator dies in the middle of an accounting period all the profits will belong to the tenant for life (*Re Lynch-White* [1937] 3 All E.R. 551).

With dividends it is more difficult to ascertain any guiding principle, but it is submitted that the material date is the date of declaration (*Wright* v. *Tuckett* (1860), 1 J. & H. 266, and *Lock* v. *Venables* (1859), 27 Beav. 598). If the dividends are declared before the testator's death they are capital; if afterwards, income. For an elaboration of this theory see B.S.K.'s article published in these columns on 8th April last at 104 Sol. J. 278.

How far can the decisions be reconciled with this suggested rule? If dividends relating to a period wholly before the testator's death are also declared before death, they are capital, even if the right to receive payment is postponed to a date after the death (*De Gendere* v. *Kent* (1867), L.R. 4 Eq. 283). It is true that in *Clive* v. *Clive* (1854), Kay 600, the court reached a different decision, but as this is a case which has been more distinguished than followed it is submitted that, in so far as it conflicts with the suggested rule, it was wrongly decided and would not now be followed.

If the dividends, still relating to a period wholly before death, are declared after death, they are income. In *Bates* v. *Mackinlay* (1862), 31 Beav. 280, Romilly, M.R., said (at p. 284): " No person is entitled to any portion of the profits made by a public company, until a dividend has been declared, which declaration of a dividend means a resolution passed by the body having the management of the company, that a dividend should be paid at a certain time. Here, no doubt, the profits had been earned at an earlier period, but that does not entitle the shareholder to a definite share of the profits."

Dividends for a period spanning the death

What is the position if the dividends are declared in respect of a period that spans the death? If declared after the date of the death, *Re Hopkins* (1874), L.R. 18 Eq. 696, is authority for the proposition that they are income. The report of this case does not show why the Apportionment Act which had been passed only four years previously did not apply. This, however, can hardly affect its authority. There seems to be no reported case in which such a dividend was declared before the death; in the unlikely event of this happening it is submitted that the rule should still be applied and the dividend added to the capital.

If the dividends are declared after the death for a period wholly after the death there is general agreement that they are income belonging to the tenant for life.

If the Act does not apply and the payment is neither a dividend nor partnership profits the common-law rule discussed at the end of the first part of this article applies.

(To be concluded) J. R. M.

SHARE TRANSFERS IN THE MID-TWENTIETH CENTURY

In November, 1959, a committee representing the London Stock Exchange, the Issuing Houses Association, the Bank of England, the clearing and merchant banks and the Chartered Institute of Secretaries was set up to recommend improvements in the method of transferring shares and debentures issued by companies established in the United Kingdom with a view to diminishing the paper work and the delays which the present system involves. The committee has now produced its first report* based upon the work of an advisory sub-committee appointed by it. This article will attempt to give a short account of the problems dealt with by the report and the solutions recommended by it.

Historical perspective

The committee observes with perfect fairness that the form of share transfer at present in use was not devised by the persons who have most occasion to use it, namely, stockbrokers and jobbers, and it is therefore not surprising that it fails to meet their needs in many respects. The share transfer originated in the late seventeenth century; it was simply a deed of assignment of the transferor's interest in the company, and, being drafted by lawyers, it was encumbered with the verbiage and prolixity of conveyancing documents of the day. Much of this prolixity remains to-day. One still encounters share transfers by which the transferor " does hereby bargain, sell, assign and transfer " the shares in question to the transferee " To hold unto the said transferee, his executors, administrators and assigns subject to the several conditions on which I (the transferor) held the same before the execution hereof." Admittedly, the form of transfer devised by the Chartered Institute of Secretaries now in common use (see Palmer's Company Law, 20th ed., p. 345) abbreviates much of this, but even this form requires to be executed by the transferee to indicate his agreement " to accept and hold the said shares or stock subject to the conditions aforesaid." Execution by the transferee was required at common law because a transfer of shares involved a novation whereby the transferee became liable to contribute toward satisfaction of the company's liabilities in place of the transferor. Nowadays the transferee executes the transfer in order to indicate that he agrees to become a member of the company (Companies Act, 1948, s. 26 (2)), and although his consent to be entered in the register of members may be given otherwise than by executing the transfer (*Cunninghame* v. *City of Glasgow Bank* (1879), 4 App. Cas. 607), it has been held that the company may refuse to register the transfer unless he does execute it

* Report of the Committee on Transfer of Securities (obtainable from the Stock Exchange, London. Price 2s).

(*Re Imperial Mercantile Credit Association; Marino's Case* (1867), L.R. 2 Ch. 596).

In early times companies did not keep registers of members nor issue share certificates. The reason for this was that the only share capital which the company usually raised was that issued at the time it was formed, and so it was possible to ascertain the allottees of this capital by inspecting the company's deed of settlement where they would be named as parties, and to deduce title to the present holder of the shares in question by producing a chain of transfer deeds from him through intermediate holders to the present holder. When, during the eighteenth century, it became commoner for companies to make further issues of shares, registers of members began to be kept, and so that the company might know who the present holders of its shares were, the practice grew up of requiring transfers to be executed on the register of members itself, and shares transferable in this form were known as inscribed shares. It was only at the end of the eighteenth century that the present system was introduced whereby share transfers are separate instruments from the register, but are only effective to pass a legal title when they are recorded on the register. At the same time it became the practice for the company to issue a share certificate to the registered holder, which he could use as prima facie evidence that he was entitled to the shares when dealing with third parties, and which the company required to be produced to it before it registered a transfer. But the share certificate itself created problems, for it did not embody the title to the shares like a share warrant to bearer, and so could not be implicitly relied on by a person who bought the shares on the faith of it; and, furthermore, when part of a holding represented by a single certificate was sold, it was necessary to have the certificate lodged with the company pending completion and registration of the transfer, and this, in turn, gave rise to the present practice of the company certificating transfers of split holdings.

Present-day problems

In the course of a single Stock Exchange Account of fourteen days shares may be sold several times, and the original holding may be split into smaller holdings on one or more of such sales. The Stock Exchange has its own efficient method of bringing the original seller and the ultimate buyer together, however, so that at the end of the account the ultimate buyer may receive an instrument of transfer. There, however, the difficulties begin. If the ultimate buyer purchases the whole of the original seller's holding, he will receive the seller's share certificate, and he will send it with the transfer to the company for registration, but it will probably be a month or more before registration is effected and a new share certificate issued to the buyer, by which time the shares may again have been sold several times. If at the close of a subsequent account the buyer has not received his share certificate, he will have to request the company to certificate a transfer by him to the person to whom he has to make delivery, and thus another period of delay is started before the person now entitled to the shares is registered as a member of the company and receives a share certificate in his name. When the transactions in the first Stock Exchange Account result in the original seller's holding being split, the confusion and paper work becomes even greater, of course. The original seller will have to lodge his share certificate with the company to obtain its certification of the transfer or transfers of part or parts of his holding and a balance ticket in his own favour in respect of the rest of his holding (if any), and before these transfers have been registered and new share certificates issued to the transferees and a balance certificate to the transferor, further transactions may take place which involve further certifications, balance tickets and delay. It is true that certifications of transfers of shares quoted on the Stock Exchange can be obtained from the Secretary of the Share and Loan Department of the Stock Exchange, and that such certifications can be obtained more speedily than from the company, but the Secretary can only certificate a transfer if the relevant share certificate is lodged with him, so that this facility is of no use if the certificate has already been lodged with the company to procure the registration of an earlier transfer. Furthermore, certification by the Secretary results in no saving of time in the long run, for he must forward the lodged share certificate to the company before it may register the certificated transfers or issue a balance ticket or certificate to the transferor.

The committee's recommendations

The period during which the mechanism for transferring shares is simplest is while they are represented by letters of allotment. The letter of allotment contains a letter of renunciation which the allottee signs when he sells the shares, and which informs the company that he has renounced his right to them in favour of the person who completes the registration application form, which also forms part of the letter of allotment. The person who completes this form and surrenders the letter of allotment to the company so that he may be entered in the register of members as holder of the shares may be the person who bought the shares from the allottee, or may, on the other hand, be a derivative purchaser, the renounced letter of allotment having passed through many hands before coming to his.

The form of share transfer recommended by the committee clearly owes much to the renounceable letter of allotment. The advisory sub-committee in fact recommended two alternative forms of transfer, but both are based on the same principle. Under the first form, the transfer by endorsement and delivery, the registered holder of the shares endorses his share certificate with his signature, and his broker completes the first part of a notice of endorsement and delivery addressed to the company in which he informs it that the shares have been transferred to the person named in the second part; the broker acting for the ultimate buyer of the shares at the end of an account receives the endorsed share certificate and notice, completes the second part of the notice with particulars of the buyer, and submits both documents to the company for registration. If the holding represented by the share certificate is split, the broker acting for the registered holder lodges the endorsed share certificate with the Secretary of the Share and Loan Department, who certificates as many notices of endorsement and delivery as there are separate buyers; the brokers for those buyers then receive their respective notices, complete the second part thereof, and submit them to the company for registration. The alternative recommended form of transfer, which the committee preferred to the transfer by endorsement and delivery, is the transfer by stock transfer form. Here the registered holder signs the first part of a master stock transfer form by which he authorises the transfer of all the shares he is selling. If his share certificate relates only to those shares, and the shares are sold to a single buyer, the share certificate and the transfer form are handed to the buyer's broker, who completes particulars of the buyer in the second part of the transfer form

and submits both documents to the company for registration. If, on the other hand, the holding represented by the share certificate is split, the seller's broker lodges the share certificate and the master stock transfer form with the Secretary of the Share and Loan Department, who certificates subsidiary stock transfer forms prepared by the broker, there being as many of these subsidiary forms as there are separate buyers; the brokers for the buyers then receive the certificated subsidiary transfer forms, complete the second part thereof with particulars of the respective buyers, and submit them to the company for registration.

On the face of it, the committee's recommendations would do little to ease the congestion and confusion which at present prevails in registering share transfers. There would, however, be a number of points where time and labour would be saved. To begin with, the signature of the seller would be required only once, by way of endorsement of his share certificate or on a master stock transfer form, and could be obtained when he instructs his broker to sell, instead of at the last moment before settlement day, as at present. Secondly, the seller's broker would not have to copy out particulars of the buyer in the transfer form as he does at present, and if he anticipated that the seller's holding was likely to be split in the course of dealings during the account, he could obtain certificated notices of endorsement and delivery or certificated subsidiary stock transfer forms for convenient denominations of the holding well in advance of settlement day. Finally, the buyer's broker would not have to obtain the buyer's execution of the share transfer form, but could submit it for registration as soon as he had entered particulars of the buyer in it himself.

Other solutions

The advisory sub-committee examined a number of other possible methods of effecting share transfers. The re-introduction of inscribed shares it rejected as more time-wasting than the present system. It also rejected the introduction of share certificates in American form with transfer forms endorsed thereon (see 104 Sol. J. 343 (1960)), because many existing share certificates and all debenture certificates already have their reverse sides taken up with printed matter relating to the rights conferred by the shares or debentures, thus leaving no room for an endorsed transfer, and because where a holding represented by a certificate in American form is split, the seller has to obtain new share certificates for the divided parts of his holding before he can complete the sale, a step which necessarily involves delay.

The sub-committee examined a proposal to establish a Stock Exchange Nominee Company (Senom) to which a seller would transfer his shares as soon as he had contracted to sell them, and from which the ultimate buyer would obtain a transfer of the shares he had bought at the end of the account. The scheme presented certain advantages, particularly that Senom would hold a pool of shares of a particular description and could satisfy an ultimate buyer by transferring any of those shares without tracing the successive sales by which they passed to him from the original seller. However, the sub-committee could not recommend that the scheme should be implemented immediately without further investigation of the staff and machinery required to work it and its cost. The sub-committee rejected a proposal that a nominee company should be established as a permanent holder of shares on behalf of investors, as has been done in several continental countries (see 104 Sol. J. 926 (1960)). Such a scheme facilitates transfers of shares from one investor to another with no more formality than the issue and clearing of a cheque, but it involves as much, if not more, work than under the present system in making dividend payments to investors.

The advisory sub-committee agreed that the ideal form of investment for ease and simplicity of transfer is the share or debenture to bearer, a form which is universally used on the continental stock exchanges. It did not consider that bearer certificates are yet acceptable to the United Kingdom investor, however, and it therefore suggested a hybrid form whereby the shares or debentures would remain registered, but would be transferable by mere delivery of the share or debenture certificate, the transferee being entitled to registration on production of a simple authority signed by the transferor. It is difficult to see what advantage this hybrid form has over an ordinary bearer certificate, and if the United Kingdom investor is ever going to accept investments in bearer form, which is devoutly to be hoped for, and speedily too, it would simplify and cheapen the cost of transactions most if the ordinary bearer certificate, transferable by mere delivery, were adopted.

R. R. Pennington.

"THE SOLICITORS' JOURNAL," 26th JANUARY, 1861

On 26th January, 1861, The Solicitors' Journal discussed a proposal for a Registry of Wills; remarking that even if "the making of a will were as easy as walking into a tavern and eating one's dinner, to carry out the idea . . . there ought to be throughout the country as many . . . registries of wills as there are taverns and chop-houses. If every member of the family of John Bull were obliged to have his chop at 'Tom's,' it would soon become more difficult to dine than suits the stomach of an Englishman; and if everyone who makes a will were obliged to attend before an official in Great Knightrider Street it would probably become necessary . . . to make one's will at a very early period of life, so as to have some chance of having a turn for an interview with the testamentary official. The increasing passion for the extension of bureaucratic officialism which exists in this country is one of the most remarkable social phenomena and Mr. Parkinson's proposal . . . is but a new development of this nowadays national folly. We have had occasion . . . to point out the absurdity of several similar proposals to substitute cumbrous and costly officialdom for the private services of professional men. There is no reason why the State should provide for a preliminary inspection of testamentary instruments in the lifetime of testators . . . Let testators therefore and not the State, make the necessary provision, or at least pay for it; and the only feasible way of making such provision would be by enacting that one of the witnesses to every will should be an attorney or solicitor. Such an enactment would . . . be the best means of, ensuring a due compliance with the statutory formalities required in the execution of wills."

THE SOLICITORS ACT, 1957

On 30th December, 1960, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that there be imposed upon Basil Napier Ratcliff, of No. 8 Westbourne Grove, Bayswater, London, W.2, a penalty of £50 to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

County Court Letter

OWNERS, OWERS AND OTHERS

ONCE upon a very long time ago it could safely be assumed that the furniture in a man's mansion, the horses in his stables and the crops in his fields were his very own property. A creditor could therefore assess the worth of his debtor with reasonable accuracy and act accordingly.

This was, of course, before the decline of the bustle and the rise of the independent female, heralded by the passing of the Married Women's Property Act, 1882, which incidentally must have caused a large number of whiskers to bristle. Since then matters have deteriorated steadily as far as the apparent affluence of debtors is concerned. The more they owe, the more prosperous they are likely to look. Was it not Henry Cecil who described a tip as being of a size that only an undischarged bankrupt could have afforded to give?

Nowadays it would be bordering on folly to assume that anyone really owns anything. As we have noted before, when a bailiff siezes goods in execution it is almost inevitable that they are either on H.P. or are said to belong to the debtor's wife. Similarly, trustees in bankruptcy are met time after time with claims by wives to the furniture in the bankrupts' homes. Indeed, it is hard to resist the conclusion either that potential bankrupts are over-endowed with natural love and affection for their wives, or that an excess of these commodities is likely to lead to insolvency, a proposition with which some husbands might be inclined to agree.

The secret owner

But reverting to the good old days before this somewhat disconcerting state of affairs developed, a creditor who took his debtor at face value could sometimes be deceived, because he might in fact have sold some or all of his belongings while still retaining their possession. In order to avoid this happening, the Bills of Sale Act, 1854, was passed which introduced the registration of bills of sale, so that a prospective creditor could search and make sure that his prospective debtor had not done the dirty on him in advance. Another Act was passed in 1866, and the law was consolidated by the Bills of Sale Act, 1878. All these Acts were intended to prevent frauds on creditors, but the Bills of Sale Act (1878) Amendment Act, 1882, was designed to protect to some extent debtors so that they could not be trapped into signing complicated documents which they did not understand. This Act applies only to bills of sale given by way of security and lays down strictly the form that such a document must take.

There are only four classes of things which can be covered by a bill of sale: goods capable of complete transfer by delivery, growing crops, fixtures, and trade machinery. If it is stated to cover any other thing, and it is given by way of security, it is void. Such a bill not in the statutory form is also void.

Both absolute bills of sale and bills of sale by way of security have to be registered within seven days under ss. 8 of the 1878 and 1882 Acts respectively at the Central Office, Royal Courts of Justice, and copies have to be filed. In addition—and this is where the milk in the coconut begins to be visible—in the case of a bill of sale given by way of security by a person resident outside the London bankruptcy area or given in respect of chattels outside that area, a copy of the bill is sent by the registrar to the county court registrar of the district concerned, or if the donor lives and the goods are situated in different areas, to the county court registrars of both districts. The county court keeps a file and index that is of course open to inspection.

It is perhaps curious that this does not apply to absolute bills of sale. The reason may be that, as we noted before, the Amendment Act of 1882 is designed for the benefit of the debtor rather than the creditor, and the necessity for local registration arises under s. 11 of that Act. It seems therefore that the Legislature took the view that the rich creditor could be driven in his phaeton and four to the central office, wherever it may have then been, to inspect the register any time he liked, while the poor debtor could only be expected to trudge wearily to his local court. How far this concept is still true is a matter of somewhat cynical conjecture; see above.

A steady trickle

A busy county court may register about one bill of sale per month, usually filed by a moneylender. It would therefore seem that this is not really a very important part of its work, and indeed hardly worth an article. However, the post the other day brought a copy of S.I. No. 2326 of 1960, the Bills of Sale (Local Registration) Rules, 1960, with the compliments of the Editor. The crack of the whip is easily recognisable even when disguised as a compliment, so at the risk of incurring the wrath of the correspondent who dislikes articles dealing with what he considers the trivia of county court functions, this article is the result.

These rules, which replace those of 1883, describe the procedure for registering security bills of sale in the county court, bearing in mind that by s. 23 of the Administration of Justice Act, 1925, it is now necessary for a copy and not an abstract of the bill to be filed. They are therefore not only the first new rules for seventy-seven years, but also thirty-five years late on the enactment that made them necessary. Ah well, these things take time, you know, and at least one can say that in a world of change one thing has remained constant in spite of the invention of the motor car, the aeroplane, the cinema, wireless, television, the atom bomb, football pools, and communism, among other lesser evils. Quite an achievement, to be sure.

J. K. H.

Honours and Appointments

Mr. EDWARD CRANGLE, Deputy Clerk to the Warrington Magistrates, has been appointed Clerk to the Worcester Magistrates in succession to Mr. John Lionel Wood, who is retiring after twenty-seven years.

Mr. DEREK WILLIAM FAZACKERLEY has been appointed Preston District Deputy Coroner and Blackpool Assistant Deputy Coroner

Mr. HENRY AUBREY FRASER, Acting Puisne Judge, British Guiana, has been appointed a Puisne Judge in that colony.

Mr. PAUL RONALD JAILAL, Senior Magistrate, British Guiana, has been appointed a Puisne Judge in that colony.

Mr. BASIL MONTAGUE WOOSNAM has been appointed Blackpool Borough Deputy Coroner and Assistant Deputy County Coroner for Preston District.

THE OFFICES ACT, 1960

In Dickens' day some offices were " dark and dirty " and even public offices were, for the most part, " low roofed, mouldy rooms." It is true that Dickens used these words in the course of describing the offices, both private and public, of the legal profession, but the conditions in which Bob Cratchit was required to work were no more attractive. In this respect, at least, the lot of the great majority of office workers of to-day is a much happier one than that of their counterparts of the nineteenth century, but, until the passing of the Offices Act, 1960, Parliament had not seen fit to legislate to ensure that their place of work was reasonably safe, healthy and well appointed.

Power to make regulations

As its title suggests, the Offices Act, 1960, applies to " offices " and this expression includes " any room of which the substantial use is for clerical work, including book-keeping, filing, typing, duplicating, machine calculating, drawing, the editorial preparation of matter for publication in print, the sorting and carrying of papers, telephone operating, and the handling of money, except any room in premises of which the substantial use is as a private residence or for private domestic purposes " (ibid., s. 2). However, unlike the Factories Act, 1937, the Shops Act, 1950, and the Mines and Quarries Act, 1954, the Act itself does not contain detailed provisions for health, welfare and safety but empowers the Secretary of State to " make regulations specifying the standards as to structure, arrangement and operation to be applied in offices for the protection of the health, safety and welfare of persons employed therein " (ibid., s. 1 (1)). In particular, the Secretary of State may make regulations relating to—

(i) the provision of sufficient and suitable sanitary conveniences and lighting and adequate supplies of drinking water ;

(ii) the provision of adequate and suitable first-aid equipment, facilities for washing and accommodation for clothing not worn by employees during working hours ;

(iii) the provision of a standard of reasonable temperature ;

(iv) the prevention of overcrowding ;

(v) the provision of effective and suitable methods of maintaining adequate ventilation ;

(vi) cleanliness of offices ;

(vii) the provision of efficient means of escape in the event of fire ;

(viii) the regular inspection and maintenance of electrical equipment ;

(ix) the fencing of dangerous parts of any machinery or equipment (ibid., s. 1 (1) (*a*)-(*m*)) ;

(x) the restriction of employment of women after childbirth (ibid., s. 1 (2)).

Before making any such regulations, the Secretary of State must consult such organisations as appear to him to represent the interests concerned (ibid., s. 1 (4)), and any person who contravenes any provision of such regulations will be guilty of an offence unless he can prove that he used all due diligence to secure compliance with the provision (ibid., s. 1 (6)). It is an offence for any person employed in an office to wilfully interfere with or misuse any equipment, appliance, facilities or other thing provided in pursuance of regulations under s. 1 of the 1960 Act (ibid., s. 3 (1)).

Posting of abstracts

Section 4 (1) of the 1960 Act requires that there shall be kept posted at a prominent place accessible to all persons employed at any office a copy of any abstract of the Act prescribed by order made by the Secretary of State by statutory instrument and a copy of any prescribed abstract of regulations made under s. 1 of the Act. Such abstracts must be posted in such a position as to be conveniently read by persons employed in the premises and shall be maintained in a legible condition (ibid., s. 4 (2)). It is an offence to pull down, injure or deface any such abstract (ibid., s. 4 (3)), and any occupier of any office who fails to comply with s. 4 (1) or s. 4 (2) of the Act will be guilty of an offence unless he can show that he used all due diligence to secure compliance with the provision (ibid., s. 4 (4)).

The Act of 1960 also contains provisions relating to the notification of accidents if the accident occurs in an office and causes loss of life to a person employed in the premises or disables any such person for more than three days from earning full wages at the work at which he was employed. In such a case written notice of the accident, in the prescribed form and accompanied by the prescribed particulars, must forthwith be sent by the occupier to the local authority in whose area the office is situated (ibid., s. 5 (1)) and any occupier who fails to do this will be guilty of an offence unless he can prove that he was not aware that the accident had occurred (ibid., s. 5 (4)). If the accident occurs within the close, curtilage or precincts of premises constituting a " factory " within the meaning of the Factories Act, 1937, the report must be sent to the inspector for the district, and not to the local authority, and no report need be sent under s. 5 of the 1960 Act if notice of the accident is required to be sent to the inspector under s. 64 of the 1937 Act (s. 5 (2) of the 1960 Act). Similarly, no report need be sent under s. 5 of the 1960 Act if the accident occurs in an office to which s. 116 of the Mines and Quarries Act, 1954, applies (s. 5 (3) of the Act of 1960).

Enforcement by local authorities

In the normal case, it is the duty of a local authority to enforce within their area the provisions of the 1960 Act and of any regulations made under s. 1 thereof (ibid., s. 6 (1)) and s. 6 (1) (*a*), (*b*) of that Act confers upon local authorities the powers to enable them to fulfil this obligation. However, as regards offices which form part of a " factory " as defined in s. 151 of the Factories Act, 1937, or of any such premises as are described in s. 103, s. 104 or s. 105 (1) of that Act, and any office which is situated within the close, curtilage or precincts of premises constituting a factory as so defined, enforcement is, as a general rule, in the hands of inspectors appointed by the Minister of Labour under s. 122 of the 1937 Act (s. 7 (1), (2) of the 1960 Act). The exceptions are regulations relating to sanitary conveniences and to the employment of women after childbirth (ibid., s. 7 (2)). Section 8 of the 1960 Act contains similar provisions in relation to any office which, for the purposes of the Mines and Quarries Act, 1954, forms or is deemed to form part of a mine or quarry within the meaning of that Act. In that case, the provisions of the 1960 Act and of any regulations made under s. 1 of that Act are to be enforced by inspectors appointed by the Minister of Power under s. 144 of the Act of 1934, or such other officers of the

Minister of Power as may be authorised in that behalf in writing under the hand of the Minister of Power (s. 8 (1), (2) of the 1960 Act). If any inspector or officer of a local authority who, in pursuance of powers conferred by the 1960 Act, is admitted into any office discloses to any person information obtained by him in that office with regard to the trade or business carried on by the occupier of that office, he shall be guilty of an offence unless such disclosure was made in the performance of his duty (ibid., s. 9).

Where, by reason of the terms of an agreement or lease relating to any premises, a person is prevented from carrying out in those premises any structural or other alterations which are necessary to enable him to comply with the provisions of any regulations made under s. 1 of the 1960 Act, that person may apply to the county court for an order setting aside or modifying any terms of the agreement or lease as the court considers just and equitable in the circumstances of the case (ibid., s. 10 (1)). In any case where such structural or other alterations are required and any person interested in the premises alleges that the whole or part of the expenses of the alterations ought to be borne by some other person having an interest in those premises, the first-mentioned person may apply to the county court, which may make such an order concerning the expenses or their apportionment as the court (having regard to the terms of any agreement or lease relating to the premises) considers just and equitable (ibid., s. 10 (2)).

More comprehensive legislation ?

Having reviewed the main provisions of the Offices Act, 1960, all that remains to be said is that it seems unlikely that the Act will ever come into force ! Section 15 (1) of the Act provides that the Act shall come into force on 1st January, 1962, but on 28th July, 1960, in a written answer to a question by the Earl of Munster, the Lord Chancellor (Viscount Kilmuir) said : " We [Her Majesty's Government] have decided to introduce comprehensive legislation on this subject, for which . . . the Minister of Labour will be responsible. It will not be possible to complete the preparation of this major measure in time to introduce it next Session ; but it is our intention that the Bill should be introduced before the Offices Bill comes into force at the beginning of 1962. The legislation will, in any event, cover shops, offices and those railway premises not already covered by factory legislation. The question of the inclusion of other classes of premises covered by the Gowers Committee's Report is still being examined." Whether or not the Offices Act, 1960, which was a private member's Bill, ever comes into force, its provisions deserve careful study because they give some indication of the shape of things to come.

D. G. C.

Property Practice

DATING A DEED—II

In our preceding article (at p. 53), we indicated why it may be important to insert the correct date and we also stated that the correct date is that of delivery. The question now arises : delivery by whom ? The formalities attending the execution of deeds will not be discussed here ; suffice it to say that every executing party not only signs and seals but also delivers the deed, and the odds are that they will do so on different dates. The result is that the standard rules and dicta previously cited as to the correct date may be of negligible assistance.

It is submitted as clear that the correct date of a deed is the date on which it is " made," which is the date on which it becomes operative and binding as what it purports to be : compare the decision of the House of Lords as to the making of a contract of sale in *Inland Revenue Commissioners* v. *Mullers Margarine, Ltd.* [1901] A.C. 217. Upon what the deed purports to do depends the number of the parties who have to execute the deed to make it complete. The correct date of the making of the deed is therefore the date on which the last essential party delivers the deed.

For example, in the simplest possible case of a conveyance of land, the deed is made when it is delivered by the grantor (donor or vendor) without any necessity for execution by the grantee : *Naas* v. *Westminster Bank, Ltd.* [1940] A.C. 366. This will be so even though in the deed the grantee undertakes obligations, since he will not be permitted to approbate and reprobate : ibid.; see also *Halsall* v. *Brizell* [1957] Ch. 169. Note also that s. 65 (1) of the Law of Property Act, 1925, provides that a reservation of a legal estate operates without execution of the conveyance by the grantee. Thus, if there are, say, two joint grantors, the deed of conveyance should be dated when it is delivered by the second of them.

Escrow

The position where there is an escrow will only be considered here in connection with the usual conveyancing practice of the vendor's solicitor having his client sign and return the conveyance (already sealed) at least a day or two before the date fixed for completion. The object is that on completion, without the frills, the vendor's solicitor can exchange the conveyance for cash. When was the conveyance delivered ? Not by the vendor's solicitor on completion except in the rare case of his being authorised so to do by his client *by deed* : *Powell* v. *London & Provincial Bank* [1893] 2 Ch. 555. There are only two alternatives. First, that the conveyance has not been delivered at all and that the transaction is incomplete pending delivery, which is surely unacceptable, although for the future the conveyance may be rescued by the maxim : *omnia præsumuntur rite et solemniter esse acta* (and see Law Society's Digest, Opinion No. 125). Second, that when the vendor returned the conveyance to his solicitor he delivered it as an escrow, i.e., not to be operative until the performance of some condition, usually the payment of the purchase price or the execution of a duplicate or counterpart : see *Beesly* v. *Hallwood Estates, Ltd.* [1960] 1 W.L.R. 549, affirmed by the Court of Appeal ([1961] 2 W.L.R. 36 ; p. 61, *ante*) and *Windsor Refrigerator Co., Ltd.* v. *Branch Nominees, Ltd.* [1960] 3 W.L.R. 108 (subject to appeal). Until performance of the condition there is no deed, merely an escrow, but on such performance the conveyance relates back and must normally be taken to have been made on the date of actual delivery and not completion : *Re Duke of Devonshire's Settlement ; Duchess of Devonshire* v. *Inland Revenue Commissioners* (1952), 31 A.T.C. 399 ; *Byrne* v. *Revenue Commissioners* [1935] Ir. R. 664.

The inevitable conclusion is that the vast majority of conveyances are incorrectly dated as at the date of completion (or thereabouts) instead of as at the date of delivery by the vendor.

Blanks

A cognate trap quite often fallen into in practice concerns the filling in of gaps in a deed by solicitors at or after completion, e.g., numerous dates in mortgage deeds. The rule is clear: "It is well known law that an agent cannot execute a deed or do any part of the execution which makes it a deed unless he is appointed under seal": per Bowen, L.J., in *Powell's* case, *supra*, at p. 568. Speaking generally, if there are material blanks in a deed, the deed is a nullity unless and until it is redelivered by the grantor after the blanks have been filled in, and then the correct date of the deed will be the date of redelivery: *Re Seymour; Fielding* v. *Seymour* [1913] 1 Ch. 475. However, the mere filling in of the correct date of a deed after its execution does not affect the deed's validity: *Keane* v. *Smallbone* (1855), 17 C.B. 179. See also *Rudd* v. *Bowles* [1912] 2 Ch. 60, where a lease was dated after execution with the consent of all the parties and it was held that the lease was not void, the parties being estopped from denying that the lease was executed on the date inserted.

Land registry transfers

In accordance with the prescribed forms in the Schedule to the Land Registration Rules, 1925, a land registry transfer must be dated and the above principles apply. However, the date on the transfer and the date of registration will rarely, if ever, be the same. It must be emphasised that the legal estate only passes on the date of registration: Land Registration Act, 1925, ss. 19 (1), 22 (1). Thus, prior to the date of registration, for example, a valid notice to quit cannot be served by a purchaser: *Smith* v. *Express Dairy Co., Ltd.* [1954] J.P.L. 45, and a receiver cannot be appointed by a transferee of a registered charge: *Lever Finance, Ltd.* v. *Needleman and Kreutzer's Trustee* [1956] Ch. 375 (see s. 33 (2) of the Land Registration Act, 1925).

It is true that s. 27 (3) of the Land Registration Act, 1925, provides that a charge by way of legal mortgage "shall take effect from the date of delivery of the deed containing the same," but it has been held that this only gives the chargee protection and not the legal estate (i.e., no priority over a tenant by estoppel): *Grace Rymer Investments, Ltd.* v. *Waite* [1958] Ch. 831.

Conclusion

One fact, if nothing else, emerges clearly from the above: the correct dating of a deed is by no means as simple as it is usually taken to be, though the consequences of an incorrect date, in theory important, are mostly mitigated in practice. It is understood that the procedure in Scotland is to insert the date on which each of the parties executes the deed, so that if any dispute arises the court can then decide when the document was "made." Is this not another example of something we could usefully learn from across the border?

(*Concluded*) P. P.

Landlord and Tenant Notebook

CONTRACTUAL OR STATUTORY?

FOR, I believe, the first time in its history, *Current Law* for May last had nothing to say about rent restriction. This negative phenomenon has not, so far, occurred again; but the output of authorities on rent control legislation is decidedly down. That the Acts are still capable of such production has, however, been demonstrated by *Fredco Estates, Ltd.* v. *Bryant* [1961] 1 W.L.R. 76; p. 86, *post* (C.A.), in which issues of different kinds fell to be decided. There was a question whether the contractual tenancy of a tenant had terminated before his death, with which I propose to deal to-day; and a question of subletting or sharing, which will be discussed in a later article.

The action was for possession of controlled premises. The defendants were husband and wife, the latter claiming a protected contractual tenancy. If she had been asked for a document in the nature of an abstract of title, the root would have been a tenancy granted to her late father in 1922; assigned, on his death intestate in 1945, to her mother, and, on her mother's death intestate in 1959, to herself. The plaintiffs' case was that the father had died a statutory tenant so that, though the defendants had lived with his widow, the "no second transmission on death" rule of *Pain* v. *Cobb* (1931), 47 T.L.R. 596, deprived them of protection. So the fundamental question was, as Ormerod, L.J., said, whether the contractual tenancy of the father had been terminated before his death.

Increases of rent

A court may infer that notice of increase (which has the effect of a notice to quit: Rent Restrictions (Notices of Increase) Act, 1923; Rent Act, 1957, s. 6 (3)) has been served from the fact that increases have been paid (*Baxter* v. *Eckersley* [1950] 1 K.B. 480 (C.A.); *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 K.B. 496 (C.A.)), or even from the oddness of the amount being paid (*Brock* v. *Wollams* [1949] 2 K.B. 388 (C.A.)). But the remarkable feature of *Fredco Estates, Ltd.* v. *Bryant* was that a notice of increase on the increased rates ground was proved to have been served in 1945: only the landlords' agents used the wrong form, new control instead of old control forms; and they mis-stated the amounts of the rates payable by the landlords. Also, they did not express that they signed the notice on the landlords' behalf.

Form

The form which should have been used in 1945 for a pre-1939 controlled house was to be found in the Schedule to the Rent Restrictions Regulations, 1940 (repealed in 1954), and contained spaces in which the landlord could state increases on the net rent and for improvements and structural alterations as well as increases of rates payable by the landlord. If the form had been used, these paragraphs would have been struck out or "nil" inserted in the space. Then, the increase in rates which was claimed was the increase since 1939, not since 1914; but this meant that less was being claimed than could have been.

On this point, it was held that the notice might not be precisely in the prescribed form, but that it was in a form substantially to the same effect: it had all the essentia'

matters in it for calculating the increase and giving the reason why.

Mistaken admission

A further difficulty arose from the circumstance that, in order to save having to call evidence, the defendants' solicitors had served the plaintiffs' solicitors with a notice to admit, and the latter had admitted, rateable values and rates payable between 1914 and 1959, but the figures given for rates payable did not include water rates (which the much-criticised draftsmen of the Increase of Rent, etc., Restrictions Act, 1920, expressly made to count as rates: s. 12 (1) (*d*)). And, while the county court judge queried the discrepancy, no evidence was actually called of what the water rates were, but the judgment proceeded on the assumption that the omission accounted for the difference. It was only in the Court of Appeal that it was actually agreed that this was so, but that court declined to set the judgment aside on the prima facie valid ground that the county court judge, there being no evidence of what the water rates had been, had misdirected himself. To do otherwise, Ormerod, L.J., said, would be entirely unreal and amount to a denial of justice.

Signature

The requirement was that " the landlord has served upon the tenant a valid notice in writing of his intention to increase the rent " (Increase of Rent, etc., Restrictions Act, 1920, s. 3 (2)), and the objection was raised that the notice, if otherwise valid, had not been signed by the landlord, and that those who signed it had not even stated that they were signing it on behalf of the landlord.

The short answer to this was that the subsection does not say that the notice must be signed by the landlord; and a further answer was that the tenant had been well aware of the fact that the signatories were the landlords' agents, whom he had always recognised as such.

Points of this nature rarely succeed; one might compare the decision in *London County Council* v. *Agricultural Food Products; Same* v. *Vitamins, Ltd.* [1955] 2 Q.B. 218. (But if, as Ormerod, L.J., said, it would have been better if the agents had stated on the notice that they were agents, it would also be better if those who " prescribe " forms, such as those to be served by landlords under Pt. II of the Landlord and Tenant Act, 1954, made express provision for signature by authorised agents: this has been done in the case of notices required by the Rent Act, 1957.)

Onus

The plaintiffs thus succeeded in establishing that the second defendant's father had died a statutory tenant, and so succeeded in spite of the use of wrong forms, mis-statement of and misunderstanding about figures, and failure to refer to agency. It might well be called a case of good luck rather than good management; but many practitioners confronted with similar problems will sympathise with the landlords rather than with the tenant. When there is a retention of possession at the termination of a fixed term, the presumption is that the tenant holds over as statutory tenant, the landlord not being able to get possession because of the Acts: *Morrison* v. *Jacobs* [1945] K.B. 577 (C.A.). But in the case of weekly and other periodical tenancies, the presumption is the other way: it was held in *Duxbury* v. *Nurse* [1947] E.G.D. 245 (C.A.), that the daughter of a tenant who had died intestate and whose widow had then died intestate was a contractual tenant. In *Mount* v. *Childs* (1948), 64 T.L.R. 559 (C.A.), a similar finding was, perhaps more cautiously, upheld: " Bearing in mind that Mrs. Childs [the defendant's mother] must have been a contractual tenant for some time, that there was no evidence at all that her tenancy had ever been determined . . . I think that the county court judge was perfectly entitled to draw the inference which he did draw." The actual decision in that case, in which the executors of a tenant's will had given notice to quit and were held thus to have debarred her son, who had resided with her for some years, from claiming a statutory tenancy, may be said to have been overruled by *Moodie* v. *Hosegood* [1952] A.C. 61, together with the authority of *Thynne* v. *Salmon* [1948] 1 K.B. 482 (C.A.), on which it was based. But the effect is that the death of a tenant may result in some person having two sets of rights; *Whitmore* v. *Lambert* [1955] 1 W.L.R. 495 (C.A.), has shown that he will be presumed to have occupied as contractual tenant.

R. B.

HERE AND THERE

YOUTH AND AGE

" Youth is the pleasant springtime of our days
As Dante so mellifluously says."

So we poor superannuated squares, those who are deep in their darkening twenties, and, even more, those who are archaically yet older still, should be profoundly grateful to any generous teenagers who are so kind as to allow us to share, however remotely, in their sprightly pleasures, instead of leaving us (as we deserve) to the lonely silence of our melancholy contemplations. It is scarcely credible (is it?) that any among us who are so honoured should fail to appreciate the opportunity of enjoying the fleeting illusion of renewing our own youth instead of being left with the stale crumbs lying beneath the deserted table of life's former feast. Still, believe it or not, there do still survive in this day and age (this age which, as an inevitable sequal to the era of the common man, has become so conspicuously the era of the even more common child) persons so rigid with moral arthritis that they actively resent the splendid sounds with which triumphant youth apprises them of its presence.

ZEAL FOR MUSIC

Now, take quite a recent case. In Leeds there lives a vital, dynamic mid-teenager of sixteen, energetic, versatile, musical, muscular. In the formalised atmosphere of the eighteenth century a piano may have sufficed for the ordinary purposes of the young Mozart, but in the limitless horizons of our time that was nothing like enough for this emancipated youth. A clarinet, drums, cymbals and a record-player barely afforded sufficient outlet for his devotion to music, while, in order to keep his physical condition at a peak, so as to be able to cope adequately with such a variety of instruments, he kept weights for weight-lifting and regularly banged his hands on the walls in order to strengthen them. Although it is recorded that " the Abbé Liszt banged with his fist," it does not appear that either Mozart or Beethoven was so earnest and

conscientious about putting himself in training. It is surely reassuring to know that in Leeds (not usually regarded as a seed-bed of the arts) there are young musicians who take their calling so seriously.

CONFLICT

BUT here we reach the melancholy and well-nigh incomprehensible climax of the story. The next-door neighbours, instead of finding this display of youthful virtuosity stimulating and (to call in a current term of approbation) "exciting," acted on the Victorian principle that the young should be seen (if absolutely necessary) but never heard, complained that they could not enjoy their television and actually took out a summons in the Leeds Juvenile Court. This in itself was a symptom of a certain outmoded and unenterprising conventionality. One would have thought that in picking a quarrel of that description their own television set represented a strong deterrent or counter-offensive weapon with its almost unbroken succession of shots, shouts of anger and screams of anguish. I have a friend who became convinced that the somewhat cantankerous old lady who lived on the floor above her was using her wireless with deliberate intent to aggravate. The house where they lived was in an isolated position, so no one but themselves was concerned. Repeated representations having proved vain, my friend decided to mount an "all out" counter-offensive. She fixed an amplifier just under the enemy's bed and then turned on her own wireless, a powerful one, at full blast, and, by moving from foreign station to foreign station, kept it going without intermission for three days and nights. (In the intervals of changing stations, she herself slept in the garden.) By the end of the period, her neighbour had got the message. There has been no occasion since to renew the treatment.

UNAPPRECIATIVE COURT

BUT, to return to the unappreciated prodigy of Leeds, between the summons and the hearing his critics even took the extreme step of calling a police officer to the house on Christmas Eve, though it is no part of the training of the police to act as arbiters in the fine arts. Perhaps, if only the lad had rendered "God rest you merry, gentlemen" or "Silent Night" on his clarinet, drums and cymbals, the hearts of his neighbours would have melted in the fiery glow of Christmastide good will. As it was, the court proceedings took their arid, unappreciative course. An order was made under the Noise Abatement Act, 1960, and the lad was ordered to pay five guineas costs at 2s. 6d. a week out of his 10s. a week pocket money. The merciful chairman did not apparently suggest that he should dispose of his clarinet, his cymbals, his drums, his record-player or his weights to discharge the obligation in less than 42 weeks. One other point, a rather engaging one: the lad told the court that he thought he was within his rights. Can it be that, but for this new Act, he could have been?

RICHARD ROE.

At the Theatre

SOLICITOR ON STAGE

"THE BARGAIN," by Michael Gilbert, at the St. Martin's Theatre, is a play by a solicitor about a solicitor, set for three-quarters of its length in a solicitor's office. Does it sound too workaday to be entertaining? It isn't. What happens to this solicitor, while not entirely incredible, is decidedly out-of-the-way.

Though proud of his integrity and highly conscious of his duty to the community ("We are not ordinary people. We are *solicitors*"), he is led by his passion for collecting miniatures into a deal in which he tries to buy a Goya portrait at a fraction of its value. The man he employed as his agent in this dubious transaction then blackmails him; awkward questions about the possession of identifiable banknotes are to be avoided by the solicitor's being forced to spend a night in the flat of the blackmailer's mistress, who would be presumed by all to have provided consideration for the gift. The man of law escapes by slugging the lady with a cosh, after which he considerately slips a cushion under her head as she lies unconscious on the floor.

This plot, which may sound on the hefty side when written out in cold blood, is in reality slight. Most of our time is spent in the offices of Messrs. Glanville and Selwyn, of New Square, Lincoln's Inn; somebody mentions *Rylands and Fletcher;* Mr. Selwyn is before the master at 11 o'clock; a lady is interviewed who thinks she might like a divorce. As was to be expected, the author eschews the element of caricature which so often distorts stage lawyers, and Mr. Alastair Sim plays George Selwyn with due restraint almost throughout.

Indeed, Mr. Sim is a great deal of the evening's entertainment; we end by feeling a real touch of affection for this dutiful, respectable, but humanly and humorously fallible man. Asked by his puzzled partner, who is worried about him, whether he is in the sort of trouble that, if he were a layman, he would want to see a solicitor about, he replies ruefully: "Well, it's the sort of trouble that, if I were a layman, I might think a solicitor could help me with." Mr. George Cole, as an affable scoundrel with a sense of humour, is a real turn, though a sinister one, and Mr. Peter Copley as the other partner is impeccably professional. Miss Janet Brown charms as a combined solicitor's bogus temporary secretary and blackmailer's girl friend, and Miss Helen Christie simmers as a genuine, permanent secretary who is jealous. Mr. Allan Jeayes is a minatory managing clerk.

Societies

The SUSSEX SOCIETY OF YOUNG SOLICITORS will hold their next meeting on 1st February at the Old Ship Hotel, King's Road, Brighton, at 7.30 p.m. Mr. Horsfall Turner, Under-Secretary, The Law Society, will talk on "Are you getting the rate for the job?"

The PLYMOUTH LAW STUDENTS' SOCIETY held their annual dinner at the Duke of Cornwall Hotel, Plymouth, on 13th January. Replying to the toast of "The City of Plymouth," the Lord Mayor, Alderman F. J. Stott, said that it was hoped that the building of the city's new law courts would begin in April.

Support for the formation of a *North East London* law society is being sought by Mr. S. Kalman, solicitor, Mayor of Stoke Newington, who is calling an informal meeting of solicitors practising in the area. His address is 55 Queen Elizabeth Walk, Stoke Newington, London, N.16.

LEGAL EDUCATION FOR AFRICAN STUDENTS

We set out below extracts from the Report of the Denning Committee on Legal Education for Students from Africa, published last week (Cmnd. 1255, H.M.S.O., 1s. 6d.).

"29. We think the right solution of these problems is to take the existing system of call to the Bar and expand it to meet the needs of a "fused" profession. There is not so much difficulty in this as might be supposed. We have considered the written examinations for call to the Bar and for admission as a solicitor: and we find that they contain much common ground. Indeed, there is a proposal on foot for revising the first examinations, at least, of both branches so as to make them comparable. The difference lies much more in the practical training. A barrister has to read for twelve months as a pupil in chambers before being allowed to practise in England or Wales. A solicitor has to be articled to a practising solicitor, normally for five years. We think that the correct solution is—

(1) to remodel the Bar examinations so as to include alternative subjects more suited to the needs of students from overseas; and

(2) to introduce a substantial period of practical training in both the barrister's and solicitor's side of the work which all such students must take before being allowed to practise.

* * * * *

The new practical training

33. The Council of Legal Education have recently organised a course of practical training for students who have passed their Bar Finals. It has been very successful. The course for home students lasts five months. The course for overseas students lasts three months. It is designed to give practical training comparable to that provided by "reading in chambers." It is under the supervision of experienced practising barristers and includes such subjects as these: Work in chambers (conferences, writing opinions, drafting indictments, writs, summonses, pleadings and affidavits): Work in criminal courts (prosecuting and defending in magistrates' courts, quarter sessions and assizes): Work in civil courts (summonses before a master, cases in county courts, and High Court, with and without a jury): The examination of witnesses: Professional ethics and responsibilities: Full case hearings (each pupil acting as counsel, witness, clerk of court, etc.): Final exercise in a formal court.

34. We think that this post-final course provides the pattern for future development. It covers the work of a barrister. It should be extended to at least six months so as to cover practical training in the work of a solicitor. This part of the course should be conducted by The Law Society and be under the supervision of experienced solicitors and cover such subjects as these: The organisation and management of a solicitor's office: Relationship between solicitor and client, including professional etiquette: Elements of book-keeping; and the keeping of accounts by a solicitor, and bills of costs: How the English solicitor prepares a case for trial: The drafting of commercial documents: Taking instructions for wills: Conveyancing and land registration. The whole course should be run by the Council of Legal Education and The Law Society in close consultation.

35. We do not think that there should be a written examination at the end of the post-final course. The subject-matter does not lend itself to it. But test papers could be set as part of the course, particularly in book-keeping and the keeping of accounts. At the end of the course certificates should be awarded by the Council of Legal Education and The Law Society to those pupils who have attended diligently and done their duties satisfactorily.

Pupillage

36. The Inns of Court have always considered it to be very important that a barrister should read as a pupil in chambers for twelve months before setting up to practise on his own account: and this is enforced nowadays by requiring every man, when he is called to the Bar, to give an undertaking that he will not practise as a barrister in England or Wales until he has done twelve months' pupillage. But, as an alternative, the Masters of the Bench may allow a man to substitute attendance for five months at a post-final practical training course in place of some or all of a period of pupillage.

37. We attach the same high value to a period of "reading in chambers," provided always that the master is conscientious to instruct and the pupil diligent to learn. And we would attach equal importance to a period of attendance in the office of a solicitor on the like proviso. We consider that a period of pupillage gives a valuable introduction to the practice and conduct of the profession: and it has inestimable advantages in bringing the pupil more closely into contact with people here and the way things are done. It has great social and educational value which will stand the pupil in good stead when he returns to his own country. Until recently both branches of the profession have been reluctant to take pupils who did not intend to practise in England. But this reluctance is being overcome. Some members of the Bar have taken pupils from overseas with conspicuous success: and the Bar Council is advancing a scheme which a group of fifteen sets of common law chambers has stated its willingness to support. It is to start on the 1st January, 1961. We have good reports too from those solicitors who have taken articled clerks from overseas into their offices.

38. We hope that the Bar Council and The Law Society will do all they can to encourage their members to take pupils from overseas. The numbers who could be taken would necessarily be few: but we think that places should be found for the best. No pupil should be accepted until he has passed his Bar examinations and taken the post-final course. The pupillage should be for a period of not less than six months. The pupil should be the pupil of one master—one barrister or one solicitor, as the case may be—and not the pupil of a set of chambers or of a partnership firm. The Bar Council propose to keep a list of those barristers ready, able and willing to take pupils from overseas and who have the practice and accommodation necessary for the purpose. And The Law Society should be asked to do the same for solicitors. Any pupil desiring to become a pupil should apply to one of these bodies with recommendations from those who sponsor him. Sometimes he will be sponsored by a government from overseas. At other times recommended by his tutors in England. The Bar Council and The Law Society should supply the prospective master in advance with detailed information about any candidate for pupillage. The freedom of choice on either side—pupil and master—should be unimpaired. No barrister or solicitor should take pupils if the Bar Council or The Law Society dissent from his doing so owing to his want of practice or so forth.

39. We realise that some alteration will be necessary in the Consolidated Regulations to enable a man from overseas, after call to the Bar, to become a pupil in a solicitor's office; but we suggest that such alteration might be made. We hope that the Inns of Court will see no objection to a barrister from overseas entering a solicitor's office as a pupil, so long as he undertakes not to practise in this country. None of the pupils whom we have in mind will wish to practise at all in this country. If they could be found places in solicitors' offices, it would be the best way to fit them for practice in a "fused" profession.

Qualification to practise

40. If it were possible, we should like to see it made a condition of right to practise that a man from overseas should pass his Bar examination, take the post-final practical training course, and then do six months' pupillage with a barrister or solicitor. But we realise that very few will be able to do the pupillage. There are not places available for all. Se we are forced to the conclusion that the pupillage cannot be compulsory. A man from overseas should be qualified to practise after passing the Bar examinations and taking the post-final course of six months which we have recommended: or at any rate doing a substantial period of practical training.

41. All of us think that post-final training in some form or other should be made compulsory as a condition of a right to practise. We understand that some of the territories are imposing their own conditions for post-final training. They will not allow a man to practise unless he has done one year's practical

training in the territory and passed an examination in the local laws. We hope that all the territories themselves will take the steps necessary to ensure that a man does a course of practical training before being allowed to practise. We would suggest for consideration this solution :

In those territories which have established or are establishing their own courses of practical training, they will no doubt make regulations requiring students to take their own course before they are allowed to practise. But we would like to suggest that, if a student should take the post-final course here, credit should be given in the territory for his having done it, and he should be given exemption from the territorial course to a corresponding extent.

In those territories which have not yet established their own courses of practical training, we hope very much that the territories will insist on the student doing the six months' post-final course in England or its equivalent elsewhere before he is admitted to practise : and will make regulations or take such other steps as are appropriate for the purpose.

We realise that this insistence on practical training will mean that it takes a man longer before he is admitted to practise. But an industrious student should be able to pass his final examination at least six months before he has completed his dinners. A requirement by the territories that he should take the post-final course should not normally involve any prolongation of his stay in England.

Admission as solicitors

42. Few students from Africa have attempted to qualify by securing admission as solicitors in England. Yet we should have thought that, for practice in Africa, a solicitor's training was most valuable. Indeed just as valuable as that of a barrister. And we know that the Governments of some territories have reserved scholarship grants for those who qualify in this way. We would like to see more of those students. Just as we hope that The Law Society will do all it can to encourage solicitors to take pupils for six months, so we hope it will encourage them to take African articled clerks. The numbers will necessarily be small but they are likely to be students intended to occupy important public offices in their own countries.

As a variant, we venture to make this suggestion : There are in the territories a number of English solicitors. If these were at liberty to accept Africans as articled clerks who could take the Intermediate Examination in the territory, and then come over to England and complete articles with a solicitor here, attend the Law School here, and take the Final Examination here, it might provide a valuable means of entry. But it would mean some amendment of The Law Society's Regulations."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Delay in Signing Contracts

Sir,—The interesting and provocative article by "E.A.W." in your issue of 13th January (p. 30) should cause us all to think. As E.A.W. says, normally speaking our conveyancing transactions form part of a conventional pattern, the reason for which is not far to seek. If the same things are done in the same order time after time it is far less likely that one of those things will be forgotten. In each transaction a considerable number of steps now has to be taken ; if those steps are not taken in the same order one or more may with too great facility be forgotten. Appreciable time can be saved to the *solicitor* as opposed to his client by adopting a uniform procedure for each transaction. It is not every solicitor who nowadays can afford the time to pause and consider what manner of amendments should be made to his existing office organisation and method in order to speed to the utmost each separate conveyancing transaction and it must be admitted that it appears to be seldom that two such transactions are identical.

I was myself surprised that E.A.W. should lay so little emphasis on the advantages of preparing the contract after the abstract has been prepared. If it were part of the pattern of every solicitor's conventions that the abstract was to be prepared first, irrational delays after exchange of contracts would largely be avoided. Obviously from the solicitor's own point of view it is an advantage to prepare the abstract before the contract, since by so doing he must bring to his attention those matters disclosed in the deeds which should also be contained in the contract. I am puzzled as to why E.A.W. should consider that a solicitor ought to refuse to act for a vendor who instructs him to prepare several copies of a contract and to submit copies to two or more possible purchasers with the intimation that the first one returned signed will be accepted. Does E.A.W. himself in fact "refuse to act" where a client of his requests him to submit a property for sale by auction ? What is the difference ? Often it is the case that a client comes in on the morning of an auction to be advised as to the legal position in which he will find himself if he bids for and obtains property to be submitted to auction that afternoon. In both the case of which E.A.W. complains and the case of the auction in the afternoon it is clearly the solicitor's duty to advise his client of the risks to be run and then leave it to the client to make up his mind whether he can afford and is prepared to run those risks.

Before every reader of the SOLICITORS' JOURNAL decides to accept *in toto* the suggestions made by E.A.W. regarding the making of local searches in advance, I think that some might be interested to learn an experience of my own firm in that connection last summer. An extensive country estate was to be submitted for auction at Michaelmas ; instructions were received about mid-August and searches and the usual preliminary inquiries were made both with the rural district council and with the county council. On the 22nd August, it was learned that an offer to purchase had been received ; the London firm of solicitors acting for the purchaser was particularly well-known to my firm and a letter was written to them to advise them that although results of local searches had not been returned, searches had been made with both appropriate authorities and could, if the purchaser wished, be handed over. On the 25th August we were thanked for our kind offer of the loan of the local searches. The county council search and inquiries having already been returned, on the 31st August the rural district council's search and inquiries were received and were sent off together with those from the county. We advised the London solicitors that we were debiting them with the actual disbursements on the two searches although we charged them nothing for preparing the searches, inquiries and making all the necessary plans. The following day the London solicitors wrote to advise us that they found themselves in "an embarrassing situation." They said that they had been careful to refer to a "loan" of the local searches but that they realised they must put in "more up-to-date searches" themselves. They felt they could not ask their client to pay for searches made by us and in the circumstances they did not intend to peruse the result of the searches and would return them to us without perusal. I would suggest therefore that in certain quarters conveyancing conventions appear to merit not mere genuflection but full length prostration.

I have been wondering whether you, Sir, would consider it to be of benefit to the profession to remind ourselves about the provisions of cl. 5 of the General Order of 1882, made under the Solicitors' Remuneration Act, 1881, which reads as follows :—

> In respect of any business which is required to be, and is, by special exertion, carried through in an exceptionally short space of time, a solicitor may be allowed a proper additional remuneration for the special exertion, according to the circumstances.

Should not clients be advised that if they wish work to be done with unusual alacrity requiring a solicitor's special exertions, they must pay for those special exertions ? Is it perhaps possible that the requests we so often receive to exert ourselves to a more or less specialised degree might be received with less frequency if payment had to be made for the special exertions in question ? I opine that if that course were taken, the voices of E.A.W. and of his co-reformers which can now be heard crying, might, in the foreseeable future, leave the wilderness.

Cirencester, Glos. C. R. MULLINGS.

Delay in Signing Contracts

Sir,—The article by E. A. W. is most welcome and this society has, in its news sheet to members, endeavoured to spread his ideas. To speed up "unregistered" conveyancing is, however, like trying to drive a vintage car on high octane petrol.

Practitioners in Middlesex do not often have to bother with getting abstracts from mortgagees. They can quickly provide office copies of the title being sold; there is no tedious examination of title and the transfer itself is a simple modern document.

Is it not time that compulsory registration of title was introduced in Hertfordshire and Essex?

WILLIAM GILLHAM,
Honorary Secretary, Central & South Middlesex Law Society.

Sir,—E. A. W.'s article in your issue of 13th January is timely and sensible. I have two comments on it, both somewhat lengthy.

My first is that the worst part of the delay which occurs at present is not so much in the contract being signed, but in a draft of it being produced. It is intensely irritating when one is acting for a purchaser to have to wait days or even sometimes weeks before being able to get to grips with the matter, which one cannot do in the absence of the contract. Moreover, from the point of view of public relations, this part of the delay is worse than the delay of which E. A. W. speaks, in signing the contract. When the purchaser's solicitor has a draft he can go over it with his client and, if there are troublesome matters to inquire about or to elucidate, he can explain them and show his client what is happening. The vendor's solicitor similarly can demonstrate to his client that he has sent on the draft and is dealing with the purchaser's inquiries. But what can one say when nothing is happening?

As every practising solicitor knows, there is more often than not quite a passage of time between the receipt of instructions by a purchaser's solicitor and the arrival of the draft contract. Very often this is no fault of the vendor's solicitor but is the fault of the vendor, or his estate agent. Very few lay vendors have any real understanding of what goes on in conveyancing and, therefore, they are not to know that, unless they instruct their solicitors, as E. A. W. very rightly suggests, on the same day as they instruct their estate agent, there is bound to be delay. Delay because probably the deeds are not in the possession of the vendor, nor even in the possession of his bank, but are with a mortgagee or the mortgagee's solicitor. What happens in practice all too often, as we know, is that the vendor "sells" his house, that is to say, he agrees a price for it, and he then sits back and thinks all is over. His agent, who has obtained the name of his solicitors, writes to them and tells them of the sale and that is probably the first they have ever heard of it. They have then to get hold of the deeds, with the attendant necessity of obtaining the vendor's signature to an authority to the person holding them, or to obtain an office copy of the entries on the land register in the case of registered land, and only when they have these can they start to prepare a draft contract. When the deeds or copy entries are obtained it is commonly found that there are documents to copy, to go with the draft contract. In that way a week or two is very easily lost which need never have been lost at all. We have to teach vendors, that is to say, everybody in the country, that when they are thinking of selling their property they must tell their solicitors about it. We must get it into their heads that the job done by their solicitors is not some piece of routine which can be started from scratch on the day the price is agreed. It is a real job, requiring consideration and time. Some years ago the principal estate agency bodies were encouraged by their councils to ask their principals to communicate with their solicitors at the time when they put a property on the market. This has not had any noticeable effect. It is a job which we as a profession must, in one way or another, do ourselves. Perhaps it could be done by advertisements in the Press by The Law Society: advertisements on behalf of the profession as a whole might serve many other useful purposes—but that is another matter; perhaps it could be done by notices exhibited in our outer offices; perhaps it could be done by slips inserted in our letters; or perhaps it can only be done, most laboriously, by personal exhortation of clients when occasion seems to offer: but done it must be by one means or another, unless delay is to continue and we are to be blamed for it.

Sometimes, of course, it is we and not our clients who are to blame. Sometimes it seems to me (perhaps I am impatient) that vendors' solicitors are quite incredibly slow in producing a draft contract. In three cases with which I happen to be dealing personally at the moment there have been delays between receipt of instructions and receipt of the draft contract of, respectively, fourteen days (contract only: copy documents referred to in it followed at intervals; information still incomplete six weeks later), thirteen days (documents in this case complete) and fifteen days so far—nothing yet received, although this is the last remaining of several flats resulting from a conversion. One does not know in these cases whether the fault is that of the vendors themselves or their solicitors, but the evil effect upon the reputation of the profession is the same in either case.

My other comment is a more general one. E. A. W., if I may respectfully say so, has correctly perceived that the basic reason for the present delay in signing contracts is that the nature of conveyancing has changed and that therefore our procedure must change too. E. A. W. has made some very interesting suggestions about one form which that change might take with the object of enabling us to sign the traditional form of binding contract more quickly. I venture to suggest a possible alternative, based upon the following consideration: investigation of the vendor's title used to be the important part of a sale; the traditional course of the transaction therefore is a contract for sale at the beginning followed by a comparatively lengthy deducing of title on the part of the vendor and investigation on the part of the purchaser with consequent requisitions on title raised by the purchaser, and concluding with the preparation of a draft conveyance, its approval by the vendor and its subsequent completion. That in fact is all that our scale fees pay us for doing, but, as we all know, it is nowadays far from all that we do and, in my submission, it is now far from being the important part of what we do, especially if the title is registered. The important part of a conveyancing transaction to-day is consideration of matters not contained in the abstract of title or in the land register: one's searches and inquiries of the local authorities, inquiries of the inspector of taxes and of the vendor himself, very often the negotiation of a mortgage and, lastly, but far from "leastly," the complicated juggling with a timetable to enable one's client at all times to have at least one roof over his head but not to have two roofs for longer than unavoidable. In all this the signature of a binding contract inevitably comes at a late stage and would continue to do so, in my view, even if E. A. W.'s suggestions were acted upon conscientiously by the whole profession. Even if solicitors do all that lies in their power to speed the signature of a binding contract, the two greatest causes of delay will remain: the arrangement of the purchaser's mortgage and the unwillingness of either party to commit himself irretrievably until on the one hand he has found a new house and on the other hand has disposed of his old. If we once grasp this change in the nature of the whole business, I suggest that two consequences follow if one wants to avoid the criticisms now made: one is that we must take more seriously the newer aspects of conveyancing. The routine questions sent off without thought of whether they apply to the particular circumstances—the omission to think whether there are other, non-routine, questions which ought to be asked in the particular case; and, a corollary of that, the perfunctory answers given by the vendor's solicitor, as often as not without any thought or without any reference to the vendor himself—when selling recently constructed property the failure to supply the purchaser's solicitor with a copy not only of the written planning permission but of the plan which was attached to it and which is the most essential part of it—these are the things which cause delay, and until we remedy them we shall deserve to be thought of as a profession which goes through routine and pettifogging motions of no real significance.

The other consequence is the realisation that under modern conditions a binding contract is bound to come at a late stage and therefore is not of the importance which it has in the traditional system. The real, the substantial agreement between the parties is still made at the outset, but it is a conditional agreement, not a binding agreement. It suffers from the defect at present that the conditions are implicit and therefore vague, but I suggest that they are generally understood to be—

(1) that the purchaser will be able to make satisfactory arrangements for raising the money;

(2) that the purchaser's solicitor will not unearth some serious snag from his inquiries of the local authority and the vendor; and

(3) that the arrangements which each party is making about disposing of his existing house or acquiring a new one, as the case may be, will come to a satisfactory conclusion.

It also suffers from the defect at present that, although it is understood between the parties that neither will back out unless one of those implicit conditions is not fulfilled, yet they are both free to back out for mere whim, change of mind or higher offer, if they choose to do so. That fact is to-day putting an increasing strain on commercial morality when it is inevitable that something like three weeks at the lowest must pass before the parties are finally committed to their bargain.

This informal agreement is followed by a process of inquiries and investigation of various matters, including the title—but only as one matter among many—and then the third stage is the preparation, approval and completion of the conveyance or transfer. Somewhere in the middle of this comes the formal contract, and formal is indeed to-day the proper word for it, because it is in most cases a mere matter of form. Neither the parties, nor, very often, their solicitors, can understand what is the significance of a binding contract which has to be signed sometimes only a few days before the substantive conveyance—and one has even known cases where it has been signed afterwards.

The basic fallacy, therefore, in our present procedure is to suppose that the parties desire or that, if they desire, they can have an absolutely binding contract at an early stage. Under modern conditions this is not possible and it is at least questionable whether it is worth having at a very late stage in the proceedings. Would it not be very much better for our profession to give formal effect to what, I have suggested, happens in fact? We should then have a conditional agreement, binding in every respect save those conditions entered into at the outset. I have phrased these conditions vaguely and in non-technical language. I am fully aware of the difficulty of giving them technical precision, but, as what our clients actually do is to enter into an agreement upon those conditions, at present tacit, is it beyond our wit as a profession to make them explicit?

I. S. WICKENDEN.

London, S.W.1.

Points in Practice

INCOME TAX—PARENT'S DEED OF COVENANT—NEWLY BORN BABIES

Sir,—Much as I hesitate to do other than accept the advice tendered by your excellent Points in Practice Department, I would query the answer to the first Point published on 2nd December, 1960 (104 SOL. J. 984). The answer suggests respectfully accepting the four propositions of an inspector of taxes as follows: "(1) That income tax is a tax on persons and not on the unborn. (2) For the purposes of the Income Tax Act, 1952, income which was paid or applied before a person was born cannot have been the income of that person. (3) That person cannot recover tax deducted in paying that income. (4) That as a matter of general law trustees cannot pay or apply income to or for the benefit of the unborn."

With respect, I suggest that the propositions should be rejected, not accepted. As far as propositions (1) and (2) are concerned, income tax is a creature of statute and in order to stand apart from the general law these propositions must surely be supported by express statutory provision, which is lacking. Proposition (3) stands or falls with propositions (1) and (2). Proposition (4), in fact, calls in aid the general law, though with a weakening lack of reference, and, in the absence of express statutory provision, must be regarded as the vital proposition.

The essence of all the propositions clearly is that an unborn person does not exist and should, with all non-existent things, be disregarded. I am not convinced that this is correct (see s. 1 (1) (*c*) of the Variation of Trusts Act, 1958), but in any case here, if I understand the facts of the question, the unborn person was *en ventre sa mère*, which makes all the difference. At this point the argument of Alan Leslie for the respondent (a solicitor's managing clerk) in *Jackson* v. *Voss* [1923] 2 K.B. 357, at p. 358 et seq., may be adopted, together with its impressive citation of authority:—

> The rule in question is of general application. In *Reve* v. *Long* (1694), 1 Salk. 227, the House of Lords decided that a contingent remainder could be taken by a child *en ventre sa mère*; and in *Thellusson* v. *Woodford* (1799), 4 Ves. 227, at p. 322, Buller, J., speaking of a child *en ventre sa mère*, said: "Such a child has been considered as a non-entity. Let us see what this non-entity can do. He may be vouched in a recovery, though it is for the purpose of making him answer over in value. He may be an executor. He may take under the Statute of Distributions. He may take by devise. He may be entitled under a charge for raising portions. He may have an injunction; and he may have a guardian. Some other cases put this beyond doubt. In *Wallis* v. *Hodson* (1740), 2 Atk. 115, at p. 117, Lord Hardwicke says: 'The principal reason I go upon in the question is, that the plaintiff was *en ventre sa mère* at the time of her brother's death, and consequently a person *in rerum naturâ*, so that both by the rules of the common and civil law, she was, to all intents and purposes, a child, as much as if born in the father's lifetime'." In the same case Buller, J., who had been a party to the earlier decision in *Doe* v. *Clarke* (1795), 2 H.Bl. 399, where it was suggested that the rule applied only where it was for the benefit of the child to apply it, said (4 Ves. 323) that there was no reason for confining the rule in that way, such a child being entitled to all the privileges of other persons: see also per Lord Eldon in *Thellusson* v. *Woodford* (1805), 11 Ves. 112, at pp. 149–50. The principle of construction now contended for was restated in *Re Burrows* [1895] 2 Ch. 497, and in *Re Wilmer's Trusts* [1903] 2 Ch. 411, and was applied in *Williams* v. *Ocean Coal Co.* [1907] 2 K.B. 422, where a posthumous child was held to be a dependant for the purposes of the Workmen's Compensation Act, 1897. In *Villar* v. *Gilbey* [1907] A.C. 139, the House of Lords distinguished the expression *children born in my lifetime* from *children living*, and held that the former of these expressions includes a child *en ventre sa mère* only if that construction is for the benefit of the child, but the House accepted the general rule in the construction of the expression *children living*, which is a term of art and therefore to be applied in all circumstances, just as the word *charity* must receive its legal meaning in the construction of the Income Tax Act: see per Lord Macnaghten in *Special Commissioners of Income Tax* v. *Pemsel* [1891] A.C. 531, at p. 580 et seq.

The decision of Rowlatt, J., in *Jackson* v. *Voss* was that the expression "child living" in the predecessor of s. 212 of the Income Tax Act, 1952 (child allowance) does not include a child *en ventre sa mère*, but he does not otherwise disapprove the above argument. Accordingly, it is submitted, first, that the general law does permit the payment of income to or for the benefit of a child *en ventre sa mère*, and second, that the effect of the above-mentioned decision is that at the time of the payment such a child was not an infant within s. 397 of the Income Tax Act, 1952. This latter submission follows also from the position accepted before the substitution of the words "at the time of the payment" for the words "at the commencement of the year" (by s. 20 (2) of the Finance Act, 1958), a child *en ventre sa mère* not being treated as an infant.

Finally, if it is pointed out, as suggested in the published answer to the Point in Practice, that "the claim which is being made is for repayment of the tax deducted from the payment by the trustees to or for the benefit of the child after the birth of the child," then cannot the inspector of taxes simply reply that the payment referred to is fairly and squarely caught by the provisions of s. 397?

J. T. FARRAND.

Wembley Park,
Middlesex.

[We agree that this approach to the problem deserves careful consideration and may well prove to be more effective than the one suggested in our answer.—ED.]

Obituary

Mr. ALBERT JOLLY, retired solicitor, of Bognor Regis, formerly of Brecon, died on 8th January, aged 74. Admitted in 1907, he was formerly clerk to Breconshire County Council.

Mr. REGINALD WILLIAM SALE, solicitor, of Derby, died on 17th January, aged 94. Admitted in 1893, he was Coroner for South Derbyshire for thirty years.

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NOTES OF CASES

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Judicial Committee of the Privy Council

UGANDA LEGISLATIVE COUNCIL: REPRESENTATION OF BUGANDA: WHETHER CONSTITUTION OF COUNCIL CHANGED

Katikiro of Buganda *v.* A.-G.

Lord Morton of Henryton, Lord Keith of Avonholm, Lord Denning, Lord Hodson and the Rt. Hon. L. M. D. de Silva. 24th November, 1960

Appeal from the Court of Appeal for Eastern Africa.

By s. 7 of the Uganda Order in Council, 1920, a legislative council, at which the governor was required to preside, was constituted for the protectorate, and by s. 13 the council was bound to observe royal instructions. Such instructions were issued in 1920 under which, as amended from time to time, the legislative council was to consist of the governor, certain *ex officio*, nominated and representative members. In December, 1957, additional royal instructions were issued providing, *inter alia*, that the legislative council should consist of a speaker, as well as the governor and the *ex officio*, nominated and representative members; that the speaker should be appointed by the governor and "shall preside at the sittings of the Legislative Council . . . provided that if the Governor shall have occasion to be present at any sitting he shall preside at such sitting." Those additional royal instructions, contrary to the original instructions of 1920 under which the governor was given an original and a casting vote, provided that "neither the Governor nor the Speaker shall have an original or casting vote." The appellant, the Katikiro of Buganda, contending that those changes effected by the additional royal instructions—that the speaker would normally preside and that the governor lost his original and casting vote—were "fundamental" or "major" changes, claimed declarations, *inter alia*, that the legislative council as thereafter constituted was not the legislative council referred to in Sched. II to the Buganda Agreement, 1955, and that he was not bound or entitled to take the steps laid down in that Schedule for the purpose of electing representative members to represent Buganda in the Legislative Council of Uganda as at present constituted—Sched. II contained regulations for the election of representative members and provided for the establishment of an electoral college for that purpose. The High Court of Uganda dismissed the suit, and on appeal the Court of Appeal for Eastern Africa on 9th May, 1959, affirmed that decision. The Katikiro appealed.

LORD MORTON OF HENRYTON, giving the judgment, said that the changes could not be regarded as "fundamental" or "major," and still less as amounting to the substitution of a new body for the legislative council as it existed before the changes came into force. The powers of the Crown and the governor respectively as regards legislation were left entirely unchanged; so, too, were the powers of the council. The governor would still preside when he had "occasion to be present," and the speaker would preside in his absence, and the business would presumably be conducted on the same lines whichever presided. Further, the loss of the governor's two votes was counter-balanced by the appointment of two additional "nominated" members (defined as persons who would support government policy), so that, from a practical point of view, the balance of voting power in the council was preserved. The rules to be applied in construing Sched. II to the Buganda Agreement of 1955 were those applicable to the construction of statutes, since that Schedule had been given the force of law by the governor pursuant to powers conferred by order in council. The contents of a White Paper (Cmd. 9320) relative to matters leading up to the agreement of 1955 were not admissible in evidence for the purpose of construing Sched. II—there was no ambiguity in that Schedule to justify the admission of extraneous evidence. Appeal dismissed.

APPEARANCES: *Phineas Quass*, Q.C., and *Montague Solomon* (*T. L. Wilson & Co.*); *B. J. M. MacKenna*, Q.C., and *D. A. Grant* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [1 W.L.R. 119

NEGLIGENCE: FURNACE OIL SPILLED INTO HARBOUR: FIRE: FORESEEABILITY OF CONSEQUENCES THE TEST OF LIABILITY: *POLEMIS* DECISION OVERRULED

Overseas Tankship (U.K.), Ltd. *v.* Morts Dock & Engineering Co., Ltd.

Viscount Simonds, Lord Reid, Lord Radcliffe, Lord Tucker, Lord Morris of Borth-y-Gest. 18th January, 1961

Appeal from the Full Court of the Supreme Court of New South Wales.

While the S.S. *Waggon Mound*, of which the appellants, Overseas Tankship (U.K.), Ltd., were charterers by demise, was taking in bunkering oil in Mort's Bay, Sydney Harbour, on 30th October, 1951, a large quantity of the oil was, through the carelessness of the appellants' servants, allowed to spill into the waters of the bay. On that and the next day the escaped furnace oil was carried by wind and tide beneath Sheerlegs Wharf, owned by the respondents, Morts Dock & Engineering Co., Ltd., shipbuilders and ship repairers, at which was lying a vessel which the respondents were refitting and for which purpose their employees were using electric and oxy-acetylene welding equipment. On 1st November some cotton waste or rag on a piece of débris floating on the oil underneath the wharf was set on fire by molten metal falling from the wharf, and the flames from the cotton waste or rag set the floating oil afire either directly or by first setting fire to a wooden pile coated with oil, and thereafter a conflagration developed which severely damaged the wharf and the equipment on it. In an action by the respondents to recover from the appellants compensation for the damage it was found by the trial judge on the evidence that the appellants "did not know and could not reasonably be expected to have known that it [the furnace oil] was capable of being set afire when spread on water," and that apart from the damage by fire the respondents had suffered some damage in that oil had congealed on and interfered with the use of their slipways, which was "damage which beyond question was a direct result of the escape of the oil." The trial judge, exercising the Admiralty jurisdiction of the Supreme Court of New South Wales, gave judgment for the respondents for damages to be assessed, and his decision was affirmed by the Full Court of the Supreme Court on 3rd December, 1959. On this appeal by the appellants one of the issues was whether the statements of principle in the judgments of the Court of Appeal in *In re Polemis and Furness Withy & Co., Ltd.* [1921] 3 K.B. 560, were correct in law, and, if so, whether they were applicable to the facts of this case.

VISCOUNT SIMONDS, giving the judgment, said that their lordships would deal with the question whether the appellants were liable for the fire damage on the footing that it was the direct result of the escape of the oil. There could be no doubt that the decision in *Polemis, supra*, plainly asserted that, if the defendant was guilty of negligence, he was responsible for

all the consequences whether reasonably foreseeable or not. The generality of the proposition was perhaps qualified by the fact that each of the lords justices referred to the outbreak of fire in that case as the direct result of the negligent act. There was thus introduced the conception that the negligent actor was not responsible for consequences which were not "direct," whatever that might mean. The decision in *Polemis* was reached upon a consideration of certain authorities, of which three were generally regarded as having influenced the decision, namely, *Smith* v. *London & South Western Railway Co.* (1870), L.R. 6 C.P. 14; *H.M.S. London* [1914] P. 72; and *Weld-Blundell* v. *Stephens* [1920] A.C. 956. Having referred to a number of cases older in date than those last cited, his lordship said that the impression that might well be left on the reader of the scores of cases in which liability for negligence had been discussed was that the courts were feeling their way to a coherent body of doctrine and were at times in grave danger of being led astray by scholastic theories of causation and their ugly and barely intelligible jargon. If the line of relevant authority had stopped with *Polemis*, their lordships might, whatever their own views as to its unreason, have felt some hesitation about overruling it. But it was far otherwise. It was true that both in England and in many parts of the Commonwealth it had from time to time been followed, but in Scotland it had been rejected with determination. It had never been subject to the express scrutiny of either the House of Lords or the Privy Council. In the inferior courts judges had sometimes declared themselves in a sense adverse to its principle. Instances might be multiplied of deviation from the rule in *Polemis*, but their lordships thought it sufficient to refer to certain later cases in the House of Lords and then to attempt to state what they conceived to be the true principle: *Glasgow Corporation* v. *Muir* [1943] A.C. 448, at p. 454; *Bourhill* v. *Young* [1943] A.C. 92, at p. 101; *Woods* v. *Duncan* [1946] A.C. 401. Enough had been said to show that the authority of *Polemis* had been severely shaken. In their lordships' opinion it should no longer be regarded as good law. It did not seem consonant with current ideas of justice or morality that for an act of negligence, however slight or venial, which resulted in some trivial foreseeable damage the actor should be liable for all consequences, however unforeseeable and however grave, so long as they could be said to be "direct." The essential factor in determining liability for the consequences of a tortious act of negligence was whether the damage was of such a kind as the reasonable man should have foreseen. Liability did not depend solely on the damage being the "direct" or "natural" consequence of the precedent act; but if a man should not be held liable for damage unpredictable by a reasonable man because it was "direct" or "natural," equally he should not escape liability, however "indirect" the damage, if he foresaw or could reasonably have foreseen the intervening events which led to its being done. Foreseeability was thus the effective test—the "direct" consequence test led to nowhere but the never-ending and insoluble problem of causation. Further, there was not one criterion for determining culpability (or liability) and another for determining compensation; their lordships were constrained to say that the dictum of Lord Sumner in *Weld-Blundell* v. *Stephens*, *supra*, that "This, however, goes to culpability, not to compensation," perpetuated an error which had introduced much confusion into the law. Their lordships had not found it necessary to consider the so-called rule of "strict liability" exemplified in *Rylands* v. *Fletcher* (1868), L.R. 3 H.L. 330. Nothing that they said was intended to reflect on that rule.

Appeal allowed and the respondents' action so far as it related to damage caused by the negligence of the appellants dismissed with costs, but the action so far as it related to damage caused by nuisance remitted to the Full Court to be dealt with as that court might think fit. The respondents must pay the costs of the appellants of this appeal and in the courts below.

APPEARANCES: *Ashton Roskill*, Q.C., *C. L. D. Meares*, Q.C. (Australia), and *Michael Kerr* (*William A. Crump & Son*); *R. L. Taylor*, Q.C., and *Russell Bainton* (both of Australia) (*Light & Fulton*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

RENT RESTRICTION: VALIDITY OF NOTICE OF INCREASE OF RENT: SHARED ACCOMMODATION

Fredco Estates, Ltd. *v.* Bryant

Ormerod, Willmer and Upjohn, L.JJ.

9th November, 1960

Appeal from Kingston-upon-Thames County Court.

G, the contractual tenant of a house, let one room to his son-in-law, *B*, in 1935, with the right to use the scullery for cooking. In April, 1945, a notice of increase of rent was served on *G* which, if valid, would have made *G* a statutory tenant. There were inaccuracies in the particulars of the rates on which the increase was based, but the increase was the proper one; the form was not that prescribed by statute, and it was signed by *T* Co., who were not the landlords. *G* paid the increased rent, but on 4th August, 1945, he died. *G's* widow continued to live in the house and paid the rent. She allowed her daughter and son-in-law (Mr. and Mrs. *B*) to have the use of three additional rooms without raising the rent and they continued to use the scullery for cooking. On 24th April, 1959, Mrs. *G* died. Mr. and Mrs. *B* continued to live in the house. On 7th October, 1959, the landlords took out a summons for possession of the whole of the premises and the county court judge made an order, holding that the notice of increase was a valid notice terminating *G's* contractual tenancy, and that the tenancy of the single room had been surrendered after *G's* death by the arrangement to take further rooms and, accordingly, Mr. and Mrs. *B* were not protected by the Rent Acts. They appealed. At the hearing before the county court judge, the inaccuracies of rates in the notice to increase appeared to be greater than they were in fact found to be before the Court of Appeal

ORMEROD, L.J., said that the fundamental question was whether *G's* contractual tenancy was terminated before his death. *B's* counsel took three points of objection to the notice, the first being that the figures in the notice, on which the increase was based, were not correctly stated. The rates stated for 1939 and 1945 would have justified the increase claimed, but according to the notice to admit facts (served by the defendants and admitted by the landlords' solicitors), the increase in rates was less than that stated and the increased rent was not justified. After the trial it appeared that the notice to admit facts showed the general rate and did not include a sum for the water rate. On the true figures, the notice showed an over-statement of 3d. on the rates for 1939 and an under-statement of 2d. on the rates for 1945, making a difference of 1d., which could not affect the weekly rent. *B's* counsel argued that, although the court was now in possession of the real figures, the case should be decided on the figures as they were put before the county court judge, but his lordship thought that it would have been entirely unreal and a denial of justice if the court did not take into account the true figures and decide the case on them. It was further argued that even if the court dealt with the true figures they were not correct and that in view of the dictum of Scrutton, L.J., in *Bourne* v. *Litton* [1924] 2 K.B. 10, at p. 19, that those matters must be precisely stated down to the last penny, the notice was invalid. His lordship thought that Scrutton, L.J., was using that language to emphasise the strictness with which s. 3 (2) of the Increase of Rent and

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Mortgage Interest (Restrictions) Act, 1920, should be construed and was not laying down that if in fact, by inadvertence or mutual misunderstanding, or for some other like reason, there was an error of one penny in the figures on which the calculation was based, which would not affect the final figures, therefore the notice should be invalid. In his lordship's view that was a small error which could have no consequence at all, and could not invalidate the notice. The second objection to the notice was that it was not in the prescribed form. It was clear that the wrong form had been used, and that it related to new controlled houses, whereas the house in question was old control, but in his lordship's judgment it was in a form substantially to the same effect as that prescribed. It had all essential matters in it for calculating the increase in rent and giving the reason why it had been increased. In those circumstances there was no substance in that point. The third objection to the notice was that it was not served by the landlord. *T* Co., chartered surveyors, did not state on the notice that they were the landlords' agents—clearly it would have been better if they had—but after that lapse of time, it would be idle to suggest that they had no authority to serve the notice. *T* Co. had been well recognised by the tenants as being the landlords' agents and there was no substance in that argument. It followed that the notice was a valid one, that *G* was not a contractual tenant at the time of his death, and accordingly, that the landlords were entitled to possession. With regard to the tenancy of the one room given to *B*, there was no doubt that that sub-letting was a proper one, but the county court judge found that it had been surrendered when *B* was given the use of additional rooms after *G's* death. There was certainly no evidence of an express surrender and his lordship found nothing to suggest that the contractual tenancy of the one room was abandoned because the use of a further three rooms was given to the defendants. The landlords' counsel then took the point that there never was a separate letting of any part of the house to *B*, and therefore he was not protected by the Act of 1920. The county court judge did not address his mind to that question, having no need to do so, but there was no suggestion that the scullery was used for any living purposes other than cooking. Applying the test laid down by Morton, L.J., in *Cole* v. *Harris* [1945] K.B. 474, at p. 485, there was not sufficient evidence to justify a finding that the letting was other than a letting of a separate part of the house. The sub-tenancy of the one room still subsisted and the appeal had to be allowed as far as that room was concerned.

WILLMER and UPJOHN, L.JJ., concurred. Appeal allowed in part. Leave to appeal to the House of Lords refused.

APPEARANCES: *C. Ross-Munro* (*Gregsons*); *A. H. Tibber* (*Friedman, Fredman & Co.*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] [1 W.L.R. 76

LAND DRAINAGE: WHETHER RESPONSIBILITY OF RURAL DISTRICT COUNCIL OR COUNTY COUNCIL

A.-G. *v.* St. Ives Rural District Council

Sellers, Pearce and Devlin, L.JJ.

6th December, 1960

Appeal from Salmon, J. ([1960] 1 Q.B. 312; 103 SOL. J. 659).

Land farmed by the plaintiff had from time to time been seriously flooded partly as a result of the non-repair of two drains which ran adjacent to and through the land. By an award under the Enclosure Act, 1800, the drains were maintainable by the surveyor of the highways of the parish; subsequently these duties were transferred to the local highway board and by the Local Government Act, 1894, they were transferred to the rural district council. The question was whether the responsibility for maintaining and repairing the drains now lay on the county council as highway authority by virtue of s. 30 (1) of the Local Government Act, 1929, and not as hitherto on the rural district council. Salmon, J., held, *inter alia*, that the drains were part of the land drainage scheme, and the function of maintaining and repairing them was not a function with respect to highways within the meaning of the proviso to s. 30 (1); accordingly, the duty to maintain and repair the drains was not thereby transferred to the county council but was reserved to the rural district council. The rural district council appealed.

PEARCE, L.J., giving the judgment of the court, said that, on the true construction of s. 30 (1) with its proviso, the rural district council retained functions inherited from the surveyor of highways unless they were "functions with respect to highways"; the difficulty lay in deciding whether the maintenance of any particular drains was a "function with respect to highways." The court did not think that the Local Government Act, 1929, had any intention of taking century-old awards as the test; and the question whether a function was a "function with respect to highways" must have been intended to be answered as a matter of fact by a contemporary consideration of the land itself. The judge propounded the test as follows: ". . . Whether or not the function of maintaining and repairing these drains and ditches can properly be described as a function with respect to highways depends, in my view, on the degree to which the drains can be truly regarded as land drainage or road drainage." It was not disputed that the decision of fact was right, if the test which the judge applied was correct. In the court's judgment it was correct and clear. Applying that test, it should be possible for surveyors of the bodies concerned to agree the boundaries of their respective spheres of duty. The appeal would be dismissed.

APPEARANCES: *C. E. Scholefield*, Q.C., and *G. J. Ponsonby* (*John J. McIntyre*); *J. P. Widgery*, Q.C., and *A. P. Fletcher* (*Sharpe, Pritchard & Co.*, for *A. Case Aylward*, Huntingdon); *Arthur L. Figgis* (*Fisher, Dowson & Wasbrough*, for *Francis & Co.*, Cambridge).

[Reported by Mrs IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 111

INCOME TAX: LONG LEASE: RENTS PAID WITHOUT DEDUCTION: LANDLORD ASSESSED

Grosvenor Place Estates, Ltd. *v.* Roberts (Inspector of Taxes)

Lord Evershed, M.R., Harman and Donovan, L.JJ.

20th December, 1960

Appeal from Danckwerts, J. ([1960] Ch. 423; 104 SOL. J. 287).

The tenant of premises under a "long lease" within s. 177 of the Income Tax Act, 1952, made to the landlords, without deduction of tax, payments of rent chargeable to tax in accordance with s. 177 under case VI of Sched. D to the Act and subject to deduction of tax under s. 170. The Special Commissioners affirmed an assessment on the landlords in respect of the payments of rent, although an assessment should have been made on the tenants and not on the landlords under s. 170 of the Act of 1952. Danckwerts, J., affirmed the decision of the Special Commissioners. The landlords appealed. *Cur. adv. vult.*

LORD EVERSHED, M.R., said that he agreed with the judgment to be delivered by Donovan, L.J. Out of respect, however, for the opposite conclusion which Harman, L.J., had reached, he (his lordship) would state shortly his own reasons for thinking that the appeal should be dismissed. The question on the facts of the present case was: the lessor having received "profits or gains from . . . property," was he, according to the general scheme and policy of the Act, liable to make a return in respect thereof? Or was he exempted from so doing by the language of subs. (1) of s. 36? He (his lordship)

agreed with Donovan, L.J., that, upon the facts of the present case, the exemption of that subsection was inapplicable. According to its strict language and in the context of chap. II of Pt. II of the Act, the subsection was related to profits or gains under Sched. D, and the exemption was similarly limited to cases where assessment of such profits or gains was "required" to be made by the Special Commissioners—for example, upon the request, as provided by s. 38, of the person chargeable. As a matter of strict language, s. 170 was concerned with the assessment of the "payment" of rent by the lessee. True, the "payment" was, by the section, identified with what would in the lessor's hands be profits or gains. Still, in the hands of the lessee, the subject-matter charged was the rent payment, which in his hands was not profits or gains, nor was it paid out of profits or gains for which he was chargeable; see the divergence in language in this respect between ss. 169 and 170, the former of which (but not the latter) stated expressly that no assessment should be made upon the recipient of the payment. But if this were too narrow a view, it was still necessary to construe the word "required" in subs. (1) of s. 36. True it was that, where the lessee had made the deduction when paying his rent and had accounted accordingly to the commissioners, then by the terms of subs. (2) of s. 170 the Special Commissioners "shall" assess him. In such case, he (his lordship) would now assume that the assessment upon the lessee was "required" to be made by the Special Commissioners within the terms of s. 36 (1) of the Act. But in the present case no deduction was made and no account delivered by the tenants. It was therefore conceded by the tenants that subs. (3) and not subs. (2) of s. 170 was applicable, and the relevant words of subs. (3) were "The Special Commissioners may . . . make an assessment." Though counsel for the tenants was at first disposed to contend that "may" meant "shall," he later conceded that the powers of assessment conferred by subs. (3) were discretionary and not obligatory. If this was right, then could it fairly be said that, in the circumstances of the present case, the Special Commissioners were "required" to make an assessment within the terms of subs. (1) of s. 36 of the Act? In his judgment it could not. In his judgment, if it was contended that the amendment of the machinery provisions of what was now s. 170 had the oblique but wide effect upon the general scheme of the Act so as, in a case such as the present, to absolve the lessor from his previously existing tax liability, such result must be justified by a strict construction of the Act, that is, of s. 36 (1); and, in his judgment, the word "required" was not satisfied by a mere discretion. Accordingly, he would dismiss the appeal.

HARMAN, L.J., dissenting, said that the strongest argument for the Crown, as it seemed to him, was that in s. 169, which dealt with deductions where the lessee had paid his rent out of taxed income, there was an express prohibition against assessing the lessor. No such provision was to be found in s. 170, and it was therefore argued that the formerly existing power to tax the lessor was not taken away. The answer seemed to be that neither rr. 19 and 21 of 1918 nor their predecessors were concerned with assessment of these sums. In one case the lessee was only recouping himself tax already paid: in the other he was till 1927 left with a debt to the Crown. When the latter was converted into an assessed tax it was not perceived that the result might be that s. 36 would be involved. Danckwerts, J., was obviously impressed by the taxpayer's argument and would apparently have accepted it but for the dicta of Finley, J., and Upjohn, J., which he mentioned. He (his lordship) did not feel bound to accede to them, neither being necessary to the decision the judge was pronouncing.

DONOVAN, L.J., in agreeing that the appeal should be dismissed, said that the power and the duty of the General Commissioners to make assessments upon annual payments made out of profits and gains not brought into charge to tax still remained. This did not involve liability to double taxation, once by deduction at source and again by assessment upon the same income. It was true that there was nothing in the Act expressly prohibiting such an injunction but the prohibition was implied in its provisions: see per Lord Davey in *London County Council* v. *A.-G.* [1901] A.C. 26, at p. 43. Appeal dismissed.

APPEARANCES: *Heyworth Talbot*, Q.C., and *C. N. Beattie* (*Stanley Attenborough & Co.*); *F. H. Bucher*, Q.C., and *Alan S. Orr* (*Solicitor of Inland Revenue*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [2 W.L.R. 83

Chancery Division

INCOME TAX: SUCCESSION TO TRADE OF SUBSIDIARY: WHETHER SUBSIDIARY'S TRADE PERMANENTLY DISCONTINUED

Aviation and Shipping Co., Ltd. *v.* Murray (Inspector of Taxes)

Danckwerts, J. 4th November, 1960

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

The appellant and its wholly-owned subsidiary Ascot were ship-owning companies, all of whose ships were managed by a managing company, and all of which were on time charter to the same charterer. On 31st December, 1954, the appellant acquired Ascot's only two ships, both coal-burning tramps, subject to their existing time charters, which the charterer agreed should be transferred to the appellant. In accordance with the appellant's policy of replacing coal-burning ships by diesel ships, the two ships were sold to foreign companies on 15th February, 1955, and 14th March, 1955, respectively. On their sale the time charters were cancelled in each case. No goodwill attached to individual tramp ships. On appeal against an assessment to income tax for the year 1956–57 made under Case I of Schedule D in respect of the appellant company's profits as shipowners, on the ground that the trade of Ascot was permanently discontinued within s. 17 of the Finance Act, 1954, it was common ground that on 31st December, 1954, the appellant had succeeded to the trade until then carried on by Ascot.

DANCKWERTS, J., said that he found it impossible to support the commissioners' conclusion that the result of the sale of the two ships was not a permanent discontinuance of the trade of Ascot. It seemed to him that when the two ships were sold, the business which had been acquired from Ascot—that is, the exploitation of those ships for profit through the medium of the managing company—disappeared. It came to an end, and therefore there was a permanent discontinuance of Ascot's trade in this case. The appeal would be allowed.

APPEARANCES: *F. N. Bucher*, Q.C., and *Peter M. B. Rowland* (*Clifford-Turner & Co.*); *Hilary Magnus*, Q.C., and *Alan S. Orr* (*Solicitor of Inland Revenue*).

[Reported by Miss PHILIPPA PRICE, Barrister-at-Law] [1 W.L.R. 129

SETTLEMENT: CONSTRUCTION: TIME FOR ASCERTAINING CLASS

***In re* Wernher's Settlement Trusts; Lloyds Bank, Ltd. *v.* Mountbatten and Others**

Buckley, J. 5th December, 1960

Adjourned summons.

A settlor, by a settlement dated 20th March, 1931, directed his trustees to hold the trust funds in trust "for all such of the children of the settlor (whether now living or hereafter to be born) as being male attain the age of twenty-one years or being female attain that age or marry," each son to receive twice as

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large a share as each daughter; if no child of the settlor attained a vested interest the fund was to be held in trust for the last survivor of the children. At the date of the settlement the settlor and his wife were both thirty-eight years old and they had three children, a son born on 22nd August, 1918, and two daughters born on 17th October, 1919, and 8th March, 1925, respectively. The son, who died on 4th December, 1942, by his will and a codicil thereto proved in 1943 directed his trustees to hold his residuary estate on trust for such of his sisters who should survive him, if more than one in equal shares. The trustees of the settlement took out a summons to determine whether, on the true construction of the settlement and in the events which had happened, the trust fund was held on trust absolutely and indefeasibly as to one moiety for the son's estate and as to one-quarter for each of the two daughters, or in trust for all the children of the settlor, including children thereafter to be born, who being male attained twenty-one or being female attained that age or married, in the stated proportions.

BUCKLEY, J., said that he had to decide whether the rule in *Andrews* v. *Partington* (1791), 3 Bro. C.C. 401, applied. The rule was in the following terms: "Where there is a bequest of an aggregate fund to children as a class, and the share of each child is made payable on attaining a given age, or marriage, the period of distribution is the time when the first child becomes entitled to receive his share, and children coming into existence after that period are excluded." It was clear from *In re Knapp's Settlement*, [1895] 1 Ch. 91, that the rule applied equally to a settlement *inter vivos*. Construing the language of the settlor, as the distribution he had made was one which was capable of being carried into effect consistently with the rule, he reached the conclusion that there was nothing in the settlement which was so inconsistent with the rule as to amount to a clear indication that the settlor intended to exclude it. In those circumstances, he thought that the rule must take effect upon the settlement, so that in the events which had happened the trust fund was held absolutely and indefeasibly as to one moiety for the son's estate and as to one-quarter for each of the two daughters.

APPEARANCES: *R. Cozens-Hardy Horne* (*Charles Russell & Co.*); *R. W. Goff*, Q.C., and *E. G. Wright* (*Taylor & Humbert*).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [1 W.L.R. 136

Queen's Bench Division

CUSTOMS AND EXCISE: POOL BETTING DUTY: WEEKLY LOTTERIES RUN BY FOOTBALL SUPPORTERS' CLUB

Customs and Excise Commissioners *v.* Dodd

Lloyd-Jacob, J. 12th December, 1960

Action.

A football supporters' association, through a committee, issued to its members membership cards, each bearing a separate number. Each week from 6th March, 1954, up to and including 14th January, 1956, the association, acting through the committee, sold, at the price of one shilling, to those of its members who might desire them, tickets setting out the names of certain football teams expected to play matches on a date stated in the ticket, together with the distinguishing number arbitrarily selected by the printer for that week for each of the teams. The purchase of a ticket entitled a member, subject to the rules therein contained, to a chance to receive a monetary prize which was sometimes a percentage of entry moneys and sometimes a fixed amount, or a share of a prize, in the event of it happening that his code number coincided with the combination of numbers allocated to the three teams which, in the week in question, happened to score goals the number of which in the aggregate constituted the highest, second highest or lowest aggregate score made by any three teams named on the relevant ticket. Members could, if they chose, and occasionally did, notify in writing a change in their code numbers for a particular week. The sums paid to the committee as a result of the sale of the tickets amounted to £70,457. By the combined effect of s. 6 (1) of the Finance (No. 2) Act, 1947, s. 14 of the Finance Act, 1948, and s. 12 of the Finance Act, 1949, the rate of pool betting duty at the relevant time was 30 per cent. The Commissioners of Customs and Excise claimed that the sum of £21,137 pool betting duty was accordingly payable by the committee.

LLOYD-JACOB, J., said that in the known form of football pool betting wherein an entrant indicated his own forecast of the outcome of specified matches, it was accurate to state that he staked his entry money on the chance of his forecast being more accurate than those of other entrants, thus backing himself against the field, and the transaction constituted a bet, notwithstanding the fact that the second party to the entrant's wagering contract was to be regarded as a group of other entrants, for whom the promoter acted as agent. The results of the specified matches would determine the accuracy or otherwise of the forecast which the entrant had made, but the event upon the issue of which success or failure of the bet fell to be determined was the entrant's forecast, and not the match results themselves. In the defendants' scheme each entrant, by reason of the allotted code numbers, which identified his entry, was required to accept the three corresponding teams arbitrarily selected by the printer as his particular entry, upon which his chance of securing a prize must depend; that necessarily meant that any entrant's chance of qualifying for a prize was not dependent upon any option or action of his own, but was wholly at the mercy of circumstance. The fact that a member might change his numbers did not turn into a betting transaction the purchase of a ticket. The system operated therefore did not include, as part of each ticket purchased, the making of a bet, and, there being no bet within the meaning of s. 4 (5) of the Finance Act, 1952, pool betting duty was not attracted.

APPEARANCES: *J. R. Cumming-Bruce* (*Solicitor, Customs and Excise*); *R. G. Clover*, Q.C., and *C. J. Cunliffe* (*Gibson & Weldon*, for *A. E. M. West & Co.*, Manchester).

[Reported by Miss M. G. THOMAS, Barrister-at-Law] [1 W.L.R. 144

ARREST WITHOUT WARRANT: OBSTRUCTION OF HIGHWAY

Gelberg *v.* Miller

Lord Parker, C.J., Streatfeild, Slade, Ashworth and Elwes, JJ. 16th December, 1960

Case stated by a Bow Street magistrate.

On 9th December, 1959, the appellant parked his motor car outside a restaurant in London while he had a meal. At about 2 p.m. the respondent, a police sergeant, and two constables were inspecting the car when the appellant came out from the restaurant, and they asked him to remove it. He refused to do so, saying that he would only be three minutes as he had to finish his lunch and pay his bill at the restaurant. He was again asked to remove the car, and on refusing was informed that if he did not one of the police constables would do so. The appellant then removed the rotor arm from the car and returned to the restaurant. After about three minutes he came back to the car and began to replace the rotor arm. The respondent asked the appellant to produce his driving licence and certificate of insurance and to give his name and address. The appellant again refused to move the car or supply his name and address, and the respondent arrested him, taking hold of his left wrist and arm. Before doing so the respondent told him he was going to arrest him for obstructing the respondent in the exercise of his duty by refusing to move the car and refusing his name and address. The respondent did not use unreasonable or

unnecessary force. The appellant was subsequently charged with unlawfully causing a vehicle to wait in a restricted street during prescribed hours contrary to regs. 3 and 15 of the London (Waiting and Loading) (Restrictions) Regulations, 1958, to which he pleaded guilty, and with obstructing the respondent in the execution of his duty contrary to s. 3 of the Prevention of Crimes Amendment Act, 1885, to which he pleaded not guilty. The appellant laid an information against the respondent alleging assault. The magistrate convicted the appellant on the charge of obstructing the respondent in the execution of his duty and dismissed the information against the respondent. The appellant appealed and the hearing was adjourned to a court of five judges. At the adjourned hearing the Attorney-General, as *amicus curiae*, did not contend that a constable had a power of arrest without warrant for the offence of obstructing him in the execution of his duty unless a breach of the peace was involved but that, on the facts, there was a power of arrest under s. 54 of the Metropolitan Police Act, 1839.

LORD PARKER, C.J., said that it was the duty of the police so far as possible to prevent any obstruction of the highway and to get the car removed, either by the appellant or by taking or, if necessary, towing it away and the actions of the appellant were directly obstructing that duty. The appeal against the conviction for obstructing the respondent in the exercise of his duty failed. The leaving of a motor car in a public highway in the Metropolitan police district and thereby wilfully causing any obstruction to the thoroughfare was an offence under s. 54 of the Metropolitan Police Act, 1839, in respect of which a power of arrest without warrant was given. Not every offence against parking regulations would amount to an unlawful obstruction of the highway, but this was a plain and almost unarguable case. To leave a car in Jermyn Street at 2 p.m. in order to have lunch at a nearby restaurant spoke for itself and could only be wilful obstruction of the highway. Accordingly, prima facie, there was a power to arrest under s. 54. It was clear from the words of Lord Simonds in *Christie* v. *Leachinsky* [1947] A.C. 573, at p. 592, that the mere fact that the charge ultimately brought was not under s. 54 of the Act of 1839 was neither here nor there. The question was: Did the appellant know or was he told the alleged facts which would make him guilty of that offence? The respondent, by informing him that he was arresting him for refusing to move his car, was informing him of a fact which in the circumstances amounted to wilful obstruction of the thoroughfare, and it mattered not that the respondent coupled with that the refusal to give his name and address or the allegation of obstructing him in the exercise of his duty. What the appellant knew and was told was ample to fulfil the obligation as to what was to be done at the time of an arrest without warrant. The appeals would be dismissed.

STREATFEILD, SLADE, ASHWORTH and ELWES, JJ., agreed. Appeals dismissed. Leave to appeal to the House of Lords refused.

APPEARANCES: *Stanley Brodie* and *John Prophet* (*Humphrey Razzall & Co.*); *Paul Wrightson* (*Solicitor for the Metropolitan Police*); *Sir Reginald Manningham-Buller*, Q.C., A.-G., and *J. R. Cumming-Bruce* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [1 W.L.R. 153

Restrictive Practices Court

MOTOR VEHICLE DISTRIBUTION SCHEME

***In re* Motor Vehicle Distribution Scheme Agreement**

Diplock, J., Mr. W. Wallace and Sir Godfrey Mitchell

21st December, 1960

Reference.

Prior to the passing of the Restrictive Trade Practices Act, 1956, the motor industry operated a system of resale price maintenance, by which manufacturers of vehicles fixed the resale prices of their products. These fixed prices were maintained and enforced by the insertion of appropriate provisions in the contracts (franchises) between manufacturers and their appointed distributors or dealers, known as franchised distributors or dealers, by the rules of the British Motor Trade Association, by the stop list procedure it invoked, and by the rules of a former distribution scheme. When the Act of 1956 was before Parliament as a Bill, the manufacturers and substantially all the concessionaires of motor vehicles appointed a sub-committee from among themselves to frame a scheme which would implement the previous system as far as possible. With one exception, minutes of the meetings of the sub-committee and other documents relating thereto were not disclosed on discovery. It was in issue on the pleadings whether the purpose of the agreement was to enforce resale price maintenance of the signatories' vehicles. The distribution scheme required the signatories to prescribe the retail prices of their products, regulated discounts to non-franchised dealers, repairers who introduced the sale of new cars and fleet users (firms who operated their own vehicles). The discount to fleet users was based on the number of vehicles they operated and was unrelated to the size of an order for new vehicles. The scheme prevented manufacturers from appointing persons as their franchised dealers unless they complied with the standards laid down by the scheme as to premises, staff and equipment, and from forbidding their franchised dealers to sell the vehicles of any signatory.

DIPLOCK, J., reading the reserved judgment of the court, said that it was a regrettable and, fortunately, unprecedented feature of the present reference that those responsible for the preparation and presentation of the signatories' case had from the outset endeavoured to avoid disclosing to the court the circumstances in which the agreement was made. It was only after the eighth day of the hearing, when as a result of cross-examination it became clear that minutes of the sub-committee responsible for the scheme and other related documents existed, that they were ultimately and gradually in three reluctant instalments disclosed. A tentative claim to privilege was abandoned, but it had been argued that these documents were irrelevant. The court was straining the limits of charity when it said that it could not follow that argument. All documents which related to the circumstances in which an agreement was made were relevant even in the ordinary case when there was no issue as to the true intention of the agreement. They were especially relevant in the present case where the true intention of the signatories had been made an issue on the pleadings. After anxious consideration of the evidence and of the contemporaneous documents, the court was satisfied that at all relevant times it was an essential requirement of the scheme that each signatory should maintain fixed resale prices for his vehicles, and that only those who did so should be parties to the scheme. Further, the restriction requiring each signatory to "prescribe" the retail prices of his products obliged them to fix resale prices for their vehicles. The case for the signatories was that the scheme ensured the existence of a nation-wide network of efficient distributors and dealers from any one of whom the public could purchase the vehicle of their choice and obtain a proper after-sales service in respect of it. It was assumed that in the absence of the scheme each leading manufacturer would prevent his franchised dealers from selling his competitors' cars; on the evidence, that was not a valid assumption. But even if it were, since each leading manufacturer had his own geographically well-spaced distributive network and insisted on higher standards for his dealers than those imposed by the scheme, the public would not be deprived of an adequate distributive or repair service for their vehicles, were the scheme to be terminated. The discount to repairers who introduced the sale of new cars was justified as promoting the

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Marlborough Area (Wilts, Berks and Hants Borders). JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices. Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.
Kidderminster, Droitwich, Worcester.—G. HERBERT BANKS, 28 Worcester Street, Kidderminster. Tels. 2911/2 and 4210. The Estate Office, Droitwich. Tels. 2084/5. 3 Shaw Street, Worcester. Tels. 27785/6.
Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street. Tel. 5194/5.

YORKSHIRE

Bradford.—NORMAN R. GEE & HEATON, 72/74 Market Street, Chartered Auctioneers and Estate Agents. Tel. 27202 (2 lines). And at Keighley.

YORKSHIRE (continued)

Bradford.—DAVID WATERHOUSE & NEPHEWS, F.A.I., Britannia House, Chartered Auctioneers and Estate Agents. Est. 1844. Tel. 22622 (3 lines).
Hull.—EXLEY & SON, F.A.L.P.A. (Incorporating Officer and Field), Valuers, Estate Agents, 70 George Street. Tel. 3399/2.
Leeds.—SPENCER, SON & GILPIN, Chartered Surveyor, 2 Wormald Row, Leeds, 2. Tel. 3-0171/2.
Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.
Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

SOUTH WALES

Cardiff.—DONALD ANSTEE & CO., Chartered Surveyors, Auctioneers and Estate Agents, 91 St. Mary Street, Tel. 30429.
Cardiff.—S. HERN & CRABTREE, Auctioneers and Valuers. Established over a century. 93 St. Mary Street. Tel. 29383.
Cardiff.—J. T. SAUNDERS & SON, Chartered Auctioneers & Estate Agents. Est. 1895. 16 Dumfries Place, Cardiff. Tel. 20234/5, and Windsor Chambers, Penarth. Tel. 22.
Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.
Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.
Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

NORTH WALES

Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.
Wrexham, North Wales and Border Counties.—A. KENT JONES & CO., F.A.I., Chartered Auctioneers and Estate Agents, Surveyors and Valuers. The Estate Offices, 43 Regent Street, Wrexham. Tel. 3483/4.

★ Classified Advertisements ★

PUBLIC NOTICES—INFORMATION REQUIRED—CHANGE OF NAME
3s. per line as printed

APPOINTMENTS VACANT—APPOINTMENTS WANTED—PRACTICES AND PARTNERSHIPS and all other headings
12s. for 30 words. Additional lines 2s. Box Registration Fee 1s. 6d. extra

Advertisements should be received by first post Wednesday for inclusion in the issue of the same week and should be addressed to THE ADVERTISEMENT MANAGER, SOLICITORS' JOURNAL, OYEZ HOUSE, BREAMS BUILDINGS, FETTER LANE, E.C.4. CHAncery 6855

PUBLIC NOTICES

NEW SCOTLAND YARD

ASSISTANT PROSECUTING SOLICITORS on permanent staff of Solicitor's Department. Age 24–40. Salary on appointment £950 to £1,135 according to age. On confirmation £1,300 at age 30, rising to £1,850. Non-contributory pension. Candidates who have passed their final examination but have not yet been admitted will be considered. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

MANCHESTER CORPORATION
TOWN CLERK'S DEPARTMENT

Applications are invited from solicitors, preferably with some local government experience, but this is not essential, for the post of ASSISTANT SOLICITOR. Salary Grade A.P.T. IV (£1,140/£1,310 per annum). Particulars of age, education, experience and the names of two referees should be sent to the Town Clerk, Town Hall, Manchester, 2, by 8th February, 1961.

BOROUGH OF FINCHLEY
ASSISTANT SOLICITOR

Applications are invited for the above position at a salary within A.P.T. Grade either III or IV according to age and experience, plus London Weighting. The provisions of the Local Government Superannuation Acts will apply and medical examination will be required.

Candidates should have experience of conveyancing and be willing to undertake advocacy. Municipal experience will be an advantage though not essential.

Applications stating age, present appointment, full details of experience and giving names of two referees must reach the undersigned not later than 6th February, 1961.

R. M. FRANKLIN,
Town Clerk.

Municipal Offices,
Finchley, N.3.

MANCHESTER CORPORATION
TOWN CLERK'S DEPARTMENT

Applications are invited for the post of Assistant Solicitor. Salary according to J.N.C. Scale " D " (£1,710/£1,975 per annum). Candidates, who should have wide experience in local government law, should send particulars of age, education, and present and past appointments, and the names of two referees to the Town Clerk, Town Hall, Manchester, 2, not later than 13th February, 1961. Canvassing is prohibited.

CITY AND COUNTY OF BRISTOL
CONVEYANCING CLERK

Applications are invited for the position of Conveyancing Clerk on Grade A.P.T. III (£935, £960—£1,140). Five day week; Superannuation Scheme; assistance with removal expenses. Candidates should have a sound knowledge of all aspects of conveyancing.

Applications giving full particulars of age, experience, qualifications, present position and salary with the names of two referees to the Town Clerk, The Council House, Bristol, 1, by 13th February.

COUNTY BOROUGH OF WEST HAM

Applications are invited for the following posts :—

SENIOR ASSISTANT SOLICITOR

Salary Scale " E " (£1,860–£2,120 per annum).

Solicitor experienced in local government work required. Duties include control of Legal Section of my Department.

ASSISTANT SOLICITOR

Salary within A.P.T. Grade V (£1,355–£1,525 per annum).

Applications will be accepted both from Solicitors experienced in Advocacy, Litigation and Conveyancing and Solicitors recently qualified. Previous local government experience not essential, but applicants must be willing to undertake Advocacy.

Terms and conditions of appointments with application forms available on request. Applications for both appointments must be received by first post 6th February, 1961.

G. E. SMITH,
Town Clerk.

West Ham Town Hall,
Stratford, E.15.

KENT COUNTY COUNCIL

requires an ASSISTANT SOLICITOR for prosecutions, advocacy and general legal work. The salary grade will be fixed having regard to the age, experience and qualifications of the successful applicant, but will not exceed Grade A.P.T. V (£1,310–£1,480).

Applications, stating age, date of admission, particulars of present and any previous appointments and general experience and giving the names of two referees, to reach the Clerk of the Council, County Hall, Maidstone, not later than the 3rd February, 1961.

CITY OF LIVERPOOL

Applications are invited for the appointment of ASSISTANT (Conveyancing), Town Clerk's Department. Salary £645–£960 per annum (A.P.T. I/II). The person appointed will be working under supervision but should have a knowledge of conveyancing.

Application form (returnable by 13th February, 1961), and further particulars from the undersigned.

THOMAS ALKER,
Town Clerk.

Municipal Buildings,
Liverpool, 2 (J.6624).

APPOINTMENTS VACANT

WEST END Solicitors require Senior Conveyancing Manager with experience of trust and probate matters and also Conveyancer with at least five years' experience. Good salaries and Pension Scheme.—Box 7361, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR to work under supervision of a Partner required as Assistant by Lincoln's Inn firm for Trust Department. Interesting work with minimum of routine. Two or more years' admission. Salary up to £1,200 per annum and Luncheon Vouchers.—Box 7362, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NEWLY admitted Solicitor required in old-established country practice in country market Town on Welsh Borders for about six months. Good salary and experience.—Box 7340, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING and Probate Assistant (admitted or unadmitted) required. Please state experience. Salary up to £1,200 per annum for the right person.—Charles & Co., 54A Woodgrange Road, Forest Gate, London, E.7. MARyland 6167.

MID SUSSEX Solicitors require able Assistant Solicitor with all round general experience and initiative. Four-figure salary and excellent opportunity for right man.—Write full particulars, Box 7345, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST Midlands Cathedral City.—Assistant Solicitor required by firm with expanding practice. Attractive Salary and prospects. Some advocacy but a variety of work for a young Solicitor looking for experience and advancement.—Box 7342, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR ASSISTANT
CHIEF SOLICITOR'S DEPARTMENT
BRITISH TRANSPORT COMMISSION

Applicants (preferably under 35 years of age) should have considerable experience of all types of Conveyancing business and good general experience.

Commencing salary £1,000 rising to £1,700 p.a.

Apply stating age, qualifications, present position and salary to Chief Solicitor, (Dept. SJ), British Transport Commission, Melbury House, Melbury Terrace, London, N.W.1.

CONVEYANCING Managing Clerk required at West London Head Office of Building Contractors for property investment and development work. Applicant should have sound knowledge and experience of general conveyancing work and should be capable of working with minimum supervision. Good prospects for suitable applicants: Pension Fund: Staff Restaurant.—Write stating age, experience and salary required to Box 7306, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Conveyancing Assistant, admitted or unadmitted, required by large Lincoln's Inn Firm. Maximum salary £1,700 per annum and Luncheon Vouchers. Three weeks' holiday.—Box 7363, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors require male assistant for busy Cashiers Department. Good salary and working conditions, L.V.'s, five-day week. Write full details.—Box 7380, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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development and efficiency of the repair trade, but the court was not satisfied that it had that effect. The discounts to fleet users were justified as preventing fleet users utilising ill-repaired or unsuitable vehicles, or alternatively as being lower than those that would prevail under competition. There was no evidence to support either contention. Accordingly, the court would declare that the restrictions contained in the scheme were contrary to the public interest and, therefore, void. In view of the obstructive tactics and unreasonable conduct of the signatories in relation to the discovery of documents, they would be ordered to pay 3,000 guineas to the registrar towards his costs.

APPEARANCES: *Guy Aldous*, Q.C., *Christopher Mayson*, and *William Aldous* (*Osmond Bard & Westbrook*); *T. G. Roche*, Q.C., and *Arthur Bagnall* (*Treasury Solicitor*).

[Reported by NORMAN PRIMOST, Esq., Barrister-at-Law] [1 W.L.R. 92

IN WESTMINSTER AND WHITEHALL

STATUTORY INSTRUMENTS

Control of Hiring (Amendment) Order, 1961. (S.I. 1961 No. 54.) 5d. See p. 68, *ante*.

Dee and Clwyd River Board (Fisheries) Order, 1960. (S.I. 1961 No. 33.) 5d.

Edinburgh Corporation (Edgelaw) Water Order, 1960. (S.I. 1960 No. 2496 (S. 136).) 6d.

Hire-Purchase and Credit Sale Agreements (Control) (Amendment) Order, 1961. (S.I. 1961 No. 53.) 4d. See p. 68, *ante*.

Importation of Raw Vegetables Order, 1961. (S.I. 1961 No. 20.) 5d.

National Health Service (Functions of Regional Hospital Boards, etc.) Regulations, 1961. (S.I. 1961 No. 34.) 4d.

National Insurance (Modification of Local Government Superannuation Schemes) Regulations, 1961. (S.I. 1961 No. 21.) 5d.

Public Health (Aircraft) (Amendment) Regulations, 1961. (S.I. 1961 No. 12.) 5d.

Public Health (Ships) (Amendment) Regulations, 1961. (S.I. 1961 No. 13.) 5d.

Stopping up of Highways Orders, 1960:—

County Borough of Birkenhead (No. 1). (S.I. 1960 No. 2488.) 5d.
County Borough of Blackpool (No. 2). (S.I. 1960 No. 2482.) 5d.
County of Derby (No. 23). (S.I. 1960 No. 2484.) 5d.
County of Derby (No. 24). (S.I. 1960 No. 2485.) 5d.
County of Devon (No. 7). (S.I. 1960 No. 2492.) 5d.
County of Gloucester (No. 19). (S.I. 1960 No. 2489.) 5d.
County of Lancaster (No. 25). (S.I. 1960 No. 2493.) 5d.
County of Lancaster (No. 30). (S.I. 1960 No. 2490.) 5d.
County of Lancaster (No. 32). (S.I. 1960 No. 2494.) 5d.
City and County Borough of Liverpool (No. 20). (S.I. 1960 No. 2477.) 5d.
City and County Borough of Liverpool (No. 21). (S.I. 1960 No. 2478.) 5d.
London (No. 78). (S.I. 1960 No. 2483.) 5d.
County of Norfolk (No. 3). (S.I. 1960 No. 2486.) 5d.
County of Northumberland (No. 10). (S.I. 1960 No. 2480.) 5d.
County of Oxford (No. 8). (S.I. 1960 No. 2481.) 5d.
County of Somerset (No. 15). (S.I. 1960 No. 2491.) 5d.
County of Surrey (No. 15). (S.I. 1960 No. 2487.) 5d.
County of Wilts (No. 17). (S.I. 1960 No. 2495.) 5d.

Stopping up of Highways Orders, 1961:—

County of Berks (No. 1). (S.I. 1961 No. 23.) 5d.
County of Dorset (No. 1). (S.I. 1961 No. 24.) 5d.
County of Hampshire (No. 1). (S.I. 1961 No. 17.) 5d.
County of Hertford (No. 1). (S.I. 1961 No. 18.) 5d.
City and County of the City of Lincoln (No. 1). (S.I. 1961 No. 25.) 5d.
County of Lincoln, Parts of Lindsey (No. 1). (S.I. 1961 No. 16.) 5d.
County of Middlesex (No. 1). (S.I. 1961 No. 26.) 5d.
County of Monmouth (No. 1). (S.I. 1961 No. 27.) 5d.
City and County Borough of Portsmouth (No. 1). (S.I. 1961 No. 15.) 5d.
County of Somerset (No. 7). (S.I. 1961 No. 14.) 5d.
County Borough of Southampton (No. 1). (S.I. 1961 No. 29.) 5d.
County of Sussex, West (No. 1). (S.I. 1961 No. 28.) 5d.

Teachers Superannuation (Somaliland) (Revocation) Scheme, 1961. (S.I. 1961 No. 42.) 4d.

Wages Regulation (Fur) Order, 1961. (S.I. 1961 No. 22.) 1s. 2d.

SELECTED APPOINTED DAYS

January

16th	Tithe (Copies of Instruments of Apportionment) Rules, 1960. (S.I. 1960 No. 2440.)
20th	Wages Regulation (Dressmaking and Women's Light Clothing) (England and Wales) Order, 1961. (S.I. 1961 No. 1.)
23rd	Building Societies (Forms and Fees) Regulations, 1961. (S.I. 1961 No. 36.)
	Wages Regulation (Aerated Waters) (England and Wales) Order, 1961. (S.I. 1961 No. 6.)
27th	Wages Regulation (Fur) Order, 1961. (S.I. 1961 No. 22.)

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be* brief, typewritten in duplicate, *and accompanied by the name and address of the sender on a separate sheet, together with a* stamped addressed envelope. *Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Income Tax—RETURN OF INCOME—TAXPAYER'S JUDGMENT AND BELIEF AS TO WHAT IS INCOME

Q. A client has entered into a transaction as a result of which a sum of money has been paid to him. He contends that this sum of money is not income, and as such there is no income tax charged upon it. He also contends that under such circumstances he is not obliged to inform the Inland Revenue of this transaction nor to include it in his income tax return. He also contends that, even if it should happen that after litigation with the Inland Revenue he was found in law to be liable to pay tax, he would still not have committed an offence under the Income Tax Acts by not including it in his income tax returns, nor mentioning it to the Inland Revenue. The declaration on the income tax return reads as follows: "I declare that in the above statement I have given a full and true return of the whole of the untaxed income in respect of which income tax is chargeable (upon the taxpayer) under Sched. D for the year ending 5th April, 19 , estimated to the best of my judgment and belief according to the provisions of the Income Tax Acts." It would appear that the wording of this declaration is susceptible of more than one meaning. According to the best of our client's judgment and belief there is no income in respect of which tax is chargeable according to the provisions of the Income Tax Acts. He contends, therefore, that even if a court were to hold him

wrong in his judgment and belief, he would still not have committed an income tax offence. Will you please advise whether he is correct and, if he is not, what he should do in these circumstances.

A. We think your client is perfectly correct. The only obligation is to return such receipts as are "income" within the meaning of the Income Tax Acts. If a taxpayer is competent himself to form a judgment as to what is or is not income, and if his judgment is that a particular sum is not income, he is under no obligation whatever to return it—indeed, to include it would make the return inaccurate as a statement of his income to the best of his knowledge and belief. If the taxpayer is not himself competent to form a judgment upon the sometimes difficult question of what is or is not "income" within the meaning of the Income Tax Acts he will no doubt seek advice from those qualified to form such a judgment and will then act on it.

Estate Duty—Bonus Shares Renounced in Favour of Wife

Q. *A* died in December, 1960, having been a holder of ordinary shares in a private limited company which, within five years of his death, issued bonus shares. The deceased renounced the bonus shares in favour of his wife, to whom they were allotted. Do these bonus shares form a gift *inter vivos* which attracts estate duty?

A. The deceased was by reason of the appropriate resolutions of the company entitled to have allotted to him the bonus shares. He directed that they should be allotted instead to his wife. We think that such a direction is undoubtedly a disposition as defined by the Finance Act, 1940, s. 59, and accordingly the disposition is, by the Finance Act, 1940, s. 44, as amended by the Finance Act, 1950, s. 46, to be treated for estate duty purposes as a gift. Furthermore, we think that there can be no doubt that the property taken under that gift was the bonus shares. As to this, see *Pye-Smith* v. *Inland Revenue Commissioners* [1958] 1 W.L.R. 905.

Covenants as to Upkeep of Road

Q. We act for a builder who is developing a small building estate. The road on the estate will be a cul-de-sac and it is intended that this road will be sewered and made up by the builder. It is unlikely that the road will be adopted by the local authority and it is therefore intended that an agreement be entered into by the ten plot-owners as to the maintenance and upkeep of the road and sewers. We shall be obliged if you can refer us to a suitable precedent.

A. It would seem desirable, if the covenants are to be mutually enforceable by and against subsequent purchasers, that they should be contained in a building scheme and written into each of the conveyances to the ten plot-owners: see, e.g., clauses in Prideaux's Precedents, 25th ed., vol. 1, at p. 712. It does not seem that a deed entered into subsequent to the conveyances would be so enforceable, as the circumstances of *Halsall* v. *Brizell* [1957] Ch. 169, were special and would not seem to apply here.

Compensation for Reduced Trade during Sewer Construction

Q. Will you please state the authority under which a shopkeeper may claim compensation from a local authority carrying out the construction of a sewer in the street outside his shop resulting in serious reduction in trade whilst the entrance was obstructed. The street concerned is an adopted highway.

A. If no negligence is involved the only remedy open to the shopkeeper is to claim compensation under s. 278 of the Public Health Act, 1936: see *Linghé* v. *Christchurch Corporation* [1912] 3 K.B. 595.

NOTES AND NEWS

TRAVELLING SCHOLARSHIP TO U.S.A.

The Law Society's Final Examination is among the professional qualifications for the Commercial Apprenticeship Award of the British Junior Chambers of Commerce, a travelling scholarship covering six months in the United States of America. The award is open to "commercial apprentices" who have completed their contracts by 31st August, 1961, and who are not over twenty-four years old at that date, and the closing date is 1st March, 1961.

Personal Note

Mr. Eric Richard Colwill, Clerk of the Peace at Newbury for the past thirteen years, is giving up the appointment at the end of January. The Newbury town council have placed on record their appreciation of his services.

Wills and Bequests

Sir William Valentine Ball, Master of the Supreme Court, King's Bench Division, 1921–43, and Senior Master and King's Remembrancer, 1943–7, left £29,318 net. He left £100 to the Royal Masonic Hospital.

Mr. William Charles Camm, solicitor, of Dudley, Worcestershire, a lecturer in law at Birmingham University, left £27,864 net. He left £3,000 to the University of Birmingham for purposes connected with the promotion of the study of the Common Law of England; such of his law books and volumes of essays, autobiographies, or reminiscences of lawyers as the Dean of the Faculty of Law of the university thinks desirable for use in the library of the faculty of law; his portrait by Randolph Schwabe to Birmingham University; books not otherwise bequeathed in his library and £250 for the purchase of books of historical or literary worth to Dudley Corporation; his freehold land at Barmouth, Merioneth, to the National Trust, "to be kept permanently as an open space to which the public can have access," and £200 to the trust; £500 to the R.N.L.I., requesting that special regard should be had to the requirements of the lifeboat service at Barmouth; £200 to Miss Smallwood's Society, Malvern; and, after other charitable and personal bequests, the residue equally between Dr. Barnardo's Homes, the National Institution for the Blind, National Library for the Blind, Nuffield Talking Books Library for the Blind and South Staffordshire Council of Social Service.

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"THE SOLICITORS' JOURNAL"

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Classified Advertisements must be received by first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

Classified Advertisements

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APPOINTMENTS VACANT—*continued*

EAST MIDLANDS.—Vacancy arises for a partner in a substantial and old-established practice in market town. Conveyancing, trusts, probate, litigation, etc. Share producing approx. £3,500 p.a. Short probationary period for right man. Purchase price discharged by instalments. Please write with full particulars of age, qualifications, and experience.—Box 127, Reyneli's, 44 Chancery Lane, W.C.2.

ASSISTANT Solicitor required. Salary by arrangement. Apply Maughan & Hall, Lloyds Bank Chambers, Collingwood Street, Newcastle upon Tyne, 1.

ADMITTED or unadmitted Probate Assistant (male or female) required by Lincoln's Inn firm. Must be under 45 and able to work with little supervision. Salary up to £1,250 per annum.—Box 7364, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required by Lincoln's Inn firm as Assistant to Partner to undertake Estate Duty, Income Tax and Life Assurance work. A stimulating and satisfying job in pleasant conditions with good remuneration. Box 7365, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LOCUM required 16th-24th February inclusive. Busy one man conveyancing practice, W.1 area. Phone Hunter 1039.

YOUNG Assistant Solicitor required for West Midlands, Market Town, Worcestershire. Mainly Common Law. Extensive practice and excellent prospects for suitable applicant. Write stating age and experience.—Box 7366, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Common Law Clerk required for West Midlands, Worcestershire. Good salary and prospects and possibly suitable living accommodation. Write stating age and experience.—Box 7367, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Managing Clerk required by young Bristol Solicitor with expanding practice. Good conditions and pension scheme. Salary dependent on age and experience, but not less than £800 per annum, plus bonus.—Box 7368, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CONVEYANCING Clerk required for S.W. London Branch Office of large firm. Good prospects for man willing to increase his knowledge and experience. Commencing Salary up to £900.—Box 7369, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BIRMINGHAM.—Solicitors require competent Solicitor to manage Litigation Department. Excellent opportunity and high remuneration for energetic advocate. Partnership considered if desired.—Box 7370, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BOLTON.—Solicitors have vacancies for (1) Experienced male or female Conveyancing Probate Managing Clerk; (2) Solicitor for general duties including occasional advocacy. Partnership prospects. Both positions will carry attractive salary. Contributory pension scheme available. Write with full particulars.—Box 7371, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Managing Clerk (admitted or unadmitted) required by established West End firm to relieve pressure on fast expanding department. Excellent opportunity for capable and ambitous man with sufficient experience to cope with intricate and heavy litigation. Write in confidence with full details and commencing salary required.—Box 7339, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON.—An Assistant Solicitor age under 35 required in the Legal Department of a progressive Life Office to deal mainly with conveyancing and company matters. Commencing salary up to £1,500 dependent on age and experience. Widow's Pension and Non-contributory Retirement Pension Schemes in operation. Excellent early prospects for the right applicant.—Box 7379, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST CUMBERLAND.—Solicitor requires young qualified Assistant, for busy Conveyancing and Probate Office, to work with little or no supervision. Some advocacy experience an advantage. Prospects of future partnership. Please state, age, experience and salary required.—Box 7381, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Managing Clerk required in E.C.4. Office, capable of working with slight supervision. Sal. £1,000. Write full particulars.—Box 7382, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

YOUNG Solicitor (older men may apply) with keenness and initiative required urgently for North-West Coastal resort to run excellent established branch office. (Part supervision if required initially.) Initially £1,650 per annum. Early partnership prospects with higher income and substantial further possibilities.—Box 7384, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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